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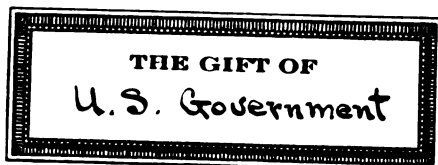
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U. S. Interstate Commerce Commission

INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME 60

DECISIONS OF THE
INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

DECEMBER, 1920, TO MARCH, 1921

REPORTED BY THE COMMISSION



WASHINGTON
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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 11012.

SWIFT & COMPANY

v.

DIRECTOR GENERAL, SOUTHERN PACIFIC COMPANY,
ET AL.

Submitted March 19, 1920. Decided December 22, 1920.

Rate on frozen meat, in carloads, from South San Francisco, Calif., to New York, N. Y., found to have been unreasonable. Reparation awarded.

R. D. Rynder for complainant.

C. A. Magaw for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report prepared by the examiner who heard the case was served upon the parties and no exceptions were filed.

Complainant is a corporation engaged in the packing-house business. By complaint seasonably filed it seeks reparation on 22 carloads of frozen meat shipped in September and October, 1917, from South San Francisco, Calif., to New York, N. Y., for export, alleging that the domestic rate of \$2.475 which was charged was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded the export rate of \$1.50, contemporaneously published from and to the same points. The rates in this report are stated in amounts per 100 pounds.

The frozen meat in question was shipped by the Western Meat Company, a subsidiary of complainant, from its plant at South San Francisco via defendants' lines, consigned to complainant at New York, the notation "for export—lighterage free" appearing on each bill of lading. The shipments were made in fulfillment of a contract entered into on September 1, 1917, between complainant and

the depot quartermaster of the United States army at Chicago, under the terms of which 3,000,000 pounds of meat were to be placed in freezer storage in New York City at the earliest practicable date, to be ready for delivery on board ship when called for on or about October 15, 1917. The meat was sold f. o. b. New York and there delivered to the United States government. It was subsequently sent to France on United States transports.

At the time of movement a rate of \$1.50, minimum 34,000 pounds, was published on cured and frozen meat, in carloads, from various California points, including South San Francisco, to north Atlantic ports, including New York, for export, subject to the following provisions:

Note 1: Except as otherwise provided, rates apply only on shipments consigned through from point of origin to European destinations. Rates named will not apply on shipments originally consigned to domestic points and afterwards diverted to European points.

Note 2: Rates apply on shipments from one shipper aggregating not less than the minimum carload weight provided for the commodity, forwarded at one time in one car to one port of export, but bills of lading may be issued consigning the freight to two or more consignees at European destinations subject to additional charges for split deliveries at port of export (as published in tariffs of individual lines, parties thereto, lawfully on file with Interstate Commerce Commission), and subject, further, to ocean minimum charge from one port of export.

Note 3: These export rates will be applied only upon satisfactory proof of export to Europe.

As complainant's shipments did not come within the requirements of note 1, they became subject to the combination domestic rate of \$2.475, and charges on this basis were paid by complainant on December 19, 1917. The \$2.475 was made up of a fresh-meat rate of \$2, minimum 20,000 pounds, to Chicago plus the dressed-beef rate of 47.5 cents, same minimum, beyond. On April 25, 1918, reference to note 1 was eliminated, leaving the \$1.50 export rate subject only to notes 2 and 3. On June 25, 1918, the export rate was canceled and the combination domestic rate increased to \$3.19. On August 31, 1918, an export rate of \$2.50, minimum 34,000 pounds, was made effective, and this is still in force except as increased under *Increased Rates*, 1920, 58 I. C. C., 220.

Complainant's witness testified that after our entry into the world war the government, to insure secrecy of vessel movement, would not permit European destinations to be shown on through bills of lading; that the carriers withdrew the through export bill of lading because of this requirement; and that note 1 was finally eliminated, as above stated, because the Railroad Administration recognized that compliance with its provisions was impossible. Complainant's position is that the shipments were entitled to the export

60 I. C. C.

rate and would have had it except for the publication of a condition precedent, in note 1, which under the circumstances was wholly unreasonable.

Defendants' witness testified that it was his understanding that the restrictions in notes 1 and 3 were imposed principally to prevent congestion at the ports by requiring shippers to arrange in advance for ocean transportation, and that note 1 was not eliminated until an embargo had been placed on all traffic to New York harbor and a system established, to prevent congestion, under which no shipments could be made to that point for export without a permit. It appears, however, that at the time the shipments moved it was necessary to procure a permit from a general operating committee, composed of representatives of the lines entering New York, before a shipment consigned to that port for export would be accepted for transportation.

The evidence shows that the \$1.50 export rate was established on August 7, 1917, from California terminals and intermediate points to Atlantic ports in anticipation of large consignments of cured and frozen meats for movement to Europe. A similar rate had been in effect from north Pacific coast terminals and intermediate points since May, 1916. Under general order No. 28, of the Director General of Railroads, all export rates, including this rate of \$1.50, were canceled on June 25, 1918, but soon afterwards a corresponding export rate of \$2.50 was established which, as aforesaid, has since remained in effect and is not attacked by complainant.

Complainant submitted an exhibit for the purpose of showing that the rate of \$1.50 was not out of line with numerous rates applicable on other traffic from San Francisco to New York, some being published as export and others as domestic rates. Thus, on butter, butterine, oleo, eggs, cheese, or dressed poultry the rate was \$2, minimum 24,000 pounds; on fish, fresh or frozen, \$1.50, minimum 24,000; on citrus and deciduous fruits, \$1.15, minimum 32,000 and 26,000, respectively; on fish, salted or pickled, \$1, minimum 30,000 pounds. The exhibit listed many other similar rates.

The shipments in question averaged 35,415 pounds, and as already stated, the minimum under the \$1.50 rate, which was restricted to cured and frozen meat, was 34,000 pounds. It is to be observed that the minimum under the combination domestic rate of \$2.475, applicable to fresh meats and dressed beef, was only 20,000 pounds. Apparently the two components of this rate were both established to cover the transportation of meat hung on hooks in packers' refrigerator cars fitted for such traffic and loading, as a rule, not much above 20,000 pounds. The minimum per car earnings under the \$2.475 rate were \$495, while they were \$510 under the \$1.50 rate.

Based on the average loading of complainant's shipments, the car-mile earnings for 3,271 miles, the distance over the route of movement, were 26.8 cents under the rate charged and would have been 16.2 cents under the export rate.

In his proposed report the examiner recommended a finding that the charges collected were unreasonable to the extent that they exceeded those which would have accrued at the export rate of \$1.50. While no exceptions were filed to this report, we are unable to accept this conclusion and find that the rate assailed as applied to the traffic under consideration, whether it be regarded as export or as domestic traffic, was unreasonable to the extent that it exceeded \$2 per 100 pounds, subject to a minimum of 34,000 pounds; that the Western Meat Company made the shipments as described; and that complainant paid and bore the charges thereon and has been damaged and is entitled to reparation, with interest, in an amount equal to the difference between the charges it paid and those that would have accrued at the rate herein found reasonable. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

HALL, *Commissioner*, dissenting:

The notation "for export—lighterage free" on the bills of lading was manifestly misleading. The shipments were consigned to complainant at New York under a contract by which it undertook to furnish 3,000,000 pounds of meat to the government f. o. b. New York to be placed in freezer storage there. They were thus domestic shipments and not entitled under any circumstances to an export rate, regardless of note 1, or any withdrawal of export bills of lading, or any permit feature. No European destination could have been given for shipments under the contract. Out of the entire quantity complainant had 22 carloads shipped from the plant of its subsidiary in California. The applicable combination of domestic commodity rates was less than the contemporaneous third-class rate. The latter, if applicable, could hardly have been unreasonable for these isolated shipments. As it was, the lower commodity rate which was applied did not yield excessive earnings and to my mind was reasonable. The comparisons made with export rates lack significance, and the complaint should be dismissed.

GO I. C. C.

No. 9560.

MERIDIAN TRAFFIC BUREAU

v.

SOUTHERN RAILWAY COMPANY, DIRECTOR GENERAL,
ET AL.

Submitted March 30, 1920. Decided December 29, 1920.

Class and commodity rates between Meridian, Miss., and points in Alabama found unreasonable and unduly prejudicial to Meridian and its shippers as compared with class and commodity rates for like distances in Alabama. Reasonable maximum rates between Meridian and points in Alabama prescribed and undue prejudice ordered removed.

Otis B. Kent and *C. W. Hayward* for complainant.

N. W. Proctor and *Charles D. Drayton* for Southern Railway Company, Alabama Great Southern Railroad Company, and Mobile & Ohio Railroad Company; and *Russell Houston* for Alabama, Tennessee & Northern Railway and its receivers, and for Alabama, Tennessee & Northern Railroad Corporation.

Charles E. Cotterill for Civic Association of Birmingham, Ala., Mobile Chamber of Commerce, and Transportation Bureau of Montgomery Chamber of Commerce; *M. M. Caskie* for Chamber of Commerce of Montgomery, Ala.; *R. G. Cobb* for Mobile Chamber of Commerce; *O. L. Bunn* for Birmingham Traffic Bureau; and *B. R. Shepherd* for Southern Sewer Pipe Works, Birmingham, Ala., interveners.

Samuel D. Weatley for the state of Alabama and Alabama Public Service Commission.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

EASTMAN, *Commissioner*:

Complainant is an association having among its members many shippers and receivers of freight at Meridian, Miss. The population of Meridian in 1920 was 23,399, and it is in the central eastern part of Mississippi, 22 miles from the Alabama line. Among its shippers are a number of lumber and planing mills, a fertilizer factory, cotton mills, several wholesale grocery establishments, and wholesalers of drugs, hardware, grain and grain products, dry goods, and other commodities. In 1915 the wholesale business transacted in Meridian and

60 I. C. C.

in surrounding territory aggregated \$20,000,000, and the amount has increased in succeeding years.

The complaint alleges that class and commodity rates between Meridian and points in Alabama on the lines of defendants Southern Railway Company, Alabama Great Southern Railroad Company, Mobile & Ohio Railroad Company, and Alabama, Tennessee & Northern Railway are unreasonable, unjustly discriminatory, unduly prejudicial to Meridian, and unduly preferential of Alabama jobbing points. On September 19, 1918, the complaint was amended to include the Director General of Railroads as a party defendant and to bring in issue the increased rates initiated by him on the lines of defendants under federal control. Effective November 1, 1918, the Alabama, Tennessee & Northern Railway, the only defendant which was not under federal control, was taken over and its tariffs adopted by the Alabama, Tennessee & Northern Railroad Corporation, hereinafter called the Tennessee & Northern. We are asked to prescribe just, reasonable, and nonprejudicial rates for the future. The Montgomery Chamber of Commerce, Mobile Chamber of Commerce, Birmingham Civic Association, Birmingham Traffic Bureau, Southern Sewer Pipe Works, Birmingham Packing Company, and National Cotton Oil Company were permitted to intervene, and later the state of Alabama and the Alabama Public Service Commission.

On March 8, 1919, a proposed report was submitted to the parties. No exceptions were filed, but upon consideration of the petition of intervention presented on April 22, 1919, by the state authorities of Alabama, and because of the apparent inadequacy of the record, the case was reopened for further hearing to secure "a more definite and comprehensive record as a basis for determining what would be reasonable interstate rates between Meridian and points in the state of Alabama." At the hearing defendants submitted comprehensive schedules of proposed class and commodity rates.

To the second proposed report, following the further hearing, exceptions were filed by the complainant and by the Mobile Chamber of Commerce, the Transportation Bureau of the Montgomery Chamber of Commerce, and the Birmingham Civic Association, interveners.

Unless otherwise specified, rates are stated herein in cents per 100 pounds and are those which were in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

THE ISSUE OF UNDUE PREJUDICE.

Complainant's principal contention is that the maintenance of relatively higher rates between Meridian and points in Alabama than apply within that state on like traffic subjects Meridian and

its industries to undue prejudice and disadvantage in the transaction of business at points in Alabama. It is asserted, and not denied, that circumstances and conditions surrounding transportation between Meridian and Alabama points are similar to those surrounding transportation wholly within Alabama.

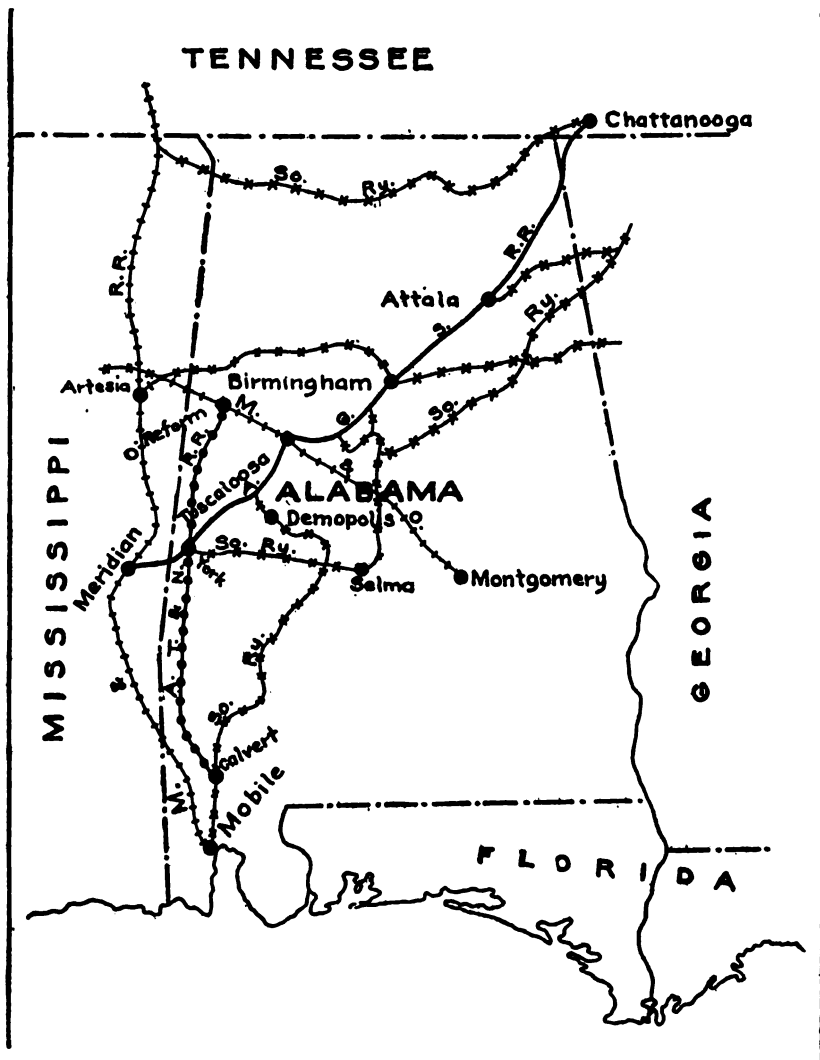
The allegations of undue preference are not confined to any particular locality in Alabama or to the rates on any particular commodities. The complaint states that Meridian is at an unfair disadvantage in competing with Alabama jobbing points. The evidence of undue preference was, however, mainly confined to the following points in Alabama: Birmingham, Tuscaloosa, Selma, Montgomery, Demopolis, and Mobile.

The Alabama Great Southern and the Southern are the direct lines from Meridian into Alabama. The Mobile & Ohio runs north and south through Meridian crossing the Alabama line 73 miles to the south and also 109 miles to the north. Points on the Tennessee & Northern are reached through its connection with the Southern and Alabama Great Southern at York, Ala., or through its connection with the Mobile & Ohio at Reform, Ala. The accompanying map gives a general outline of the situation.

The Southern and Alabama Great Southern publish specific class rates from Meridian to common points in Alabama. Otherwise class-rate distance scales apply between Meridian and points in Alabama on those roads and the Mobile & Ohio, and similar scales apply for single-line intrastate movements in Alabama over all the defendant roads. The specific class rates referred to are with few exceptions the same as the corresponding distance rates of either the Alabama Great Southern or Southern. Between points on the Tennessee & Northern and Meridian or Alabama points on other roads the through rates are, except for certain joint rates published by the Alabama Great Southern and hereinafter explained, the combinations of local rates based on York or Reform, less 10 per cent on intrastate traffic. Complainant's principal interest is in the rates of the Southern and Alabama Great Southern.

The interstate class scale of the Alabama Great Southern is the same as its Alabama state scale and, in general, is lower than either the interstate or state scale of the Southern. The state scale of the Southern is in many instances lower than its interstate scale, and in no instance, for distances up to 200 miles, is it higher. For the reasons hereinafter stated it will be unnecessary to consider rates for distances over 200 miles. The state scale of the Mobile & Ohio is in some instances the same as, in some lower than, and in some higher than its interstate scale. The statement in Appendix No. 1 illustrates the class-rate situation on the Southern, the Alabama

Great Southern, and the Mobile & Ohio. The Tennessee & Northern's state scale, voluntarily established, as a rule is substantially lower than its interstate scale, as illustrated in Appendix No. 2. At the hearing on July 8, 1919, the traffic manager of the Tennessee & Northern testified that his company applied the state scale on inter-



state traffic from Meridian. Such a practice was, and, if persisted in, is, illegal because contrary to the applicable tariff on file with us.

In general complainant's traffic moves on class rates, while in Alabama similar traffic usually moves on commodity rates which are relatively much lower. The latter rates were prescribed by the Alabama legislature in what is commonly known as the "110 commodity I. C. C."

modities act" and were made effective in 1907 by the defendants, with the exception of the Tennessee & Northern, to which the act did not apply. It appears that the intent of the act, in the main, was to place intrastate rates in Alabama on substantially the same basis as intrastate rates in Georgia.

Complainant submitted a number of exhibits comparing the Meridian rates on representative commodities with similar rates in Alabama. In general the former are class rates and the latter commodity rates. For distances from 22 to 150 miles on the Alabama Great Southern the differences between the Alabama rates and the Meridian rates, on 50 commodities of ordinary character, are quite marked. Complainant refers particularly to the less-than-carload rates for distances of 50 miles on canned goods, the interstate rate from Meridian being 36.5 cents, the Alabama rate 22.5 cents; on flour, 17.5 cents and 10.5 cents, respectively; on cotton piece goods, 29 cents and 16.5 cents; on soap, soap powders, and washing compounds, 29 cents and 12.5 cents; on cowpeas, 15 cents and 10 cents; on cotton ties, 20 cents and 12.5 cents; and on bagging, 20 cents and 17.5 cents. Similar discrepancies are shown by the exhibit on the entire list of commodities, the Meridian rates being in some instances 300 per cent of the Alabama rates for the same distances. A similar exhibit of rates on the Southern discloses, on the whole, even greater disparities. The respective interstate and state less-than-carload rates for 50 miles are: Canned goods, 45 cents and 22.5 cents; cotton-factory products, 40 cents and 16.5 cents; flour, 21.5 cents and 10.5 cents; soap, soap powder, and washing compounds, 40 cents and 12.5 cents. These illustrations are typical.

On various commodities, representative of the articles contained in the schedule prescribed by the Alabama legislature, complainant submits voluminous rate comparisons which show the rates from Meridian to Alabama points to be much higher for similar distances, and frequently for less distances, than those from certain competing points in Alabama. Thus, to Livingston, on the Alabama Great Southern, the distance from Meridian is 36 miles; from Tuscaloosa, 61 miles; and from Birmingham, 116 miles. The rates on certain staple commodities are:

	Meridian.	Tuscaloosa.	Birmingham.
	Cents.	Cents.	Cents.
Canned goods ¹	31.5	24	31.5
Cotton piece goods ²	25	17.5	25
Grain and grain products ³	13	11	15
Dried apples and peaches ¹	31.5	21.5	20
Potatoes ¹	25	14	22

¹ Less than carloads.

² Any quantity.

³ Carloads.

To Demopolis, on the Southern, 54 miles from Meridian and 50 miles from Selma, the rates from Selma are from 5 to 35.5 cents lower than from Meridian. To Uniontown, on the same road, 75 miles from Meridian and 139 miles from Birmingham, the Birmingham rates with three exceptions are lower, in some instances considerably lower, than the Meridian rates. To Reform, on the Mobile & Ohio, the distance from Montgomery is 138 miles, while from Meridian, over the Mobile & Ohio, the distance is 127 miles, and over the Alabama Great Southern and the Tennessee & Northern via York, 100 miles. With the exception of fertilizer, every commodity takes higher rates from Meridian than from Montgomery, in some instances over 200 per cent higher.

Joint rates on classes and certain commodities are published by the Alabama Great Southern in its tariff I. C. C. No. 1430, between Meridian, Epes, Ala., Tuscaloosa, Birmingham, and certain points taking Birmingham rates, on the one hand, and points on the Tennessee & Northern, on the other. Panola, Ala., a point on the latter line, is 62 miles from Meridian, 69 miles from Tuscaloosa via the Mobile & Ohio through Reform, and 105 miles via the Alabama Great Southern through York. The joint rates between Tuscaloosa and Panola are in many instances considerably lower than those between Meridian and Panola. The tariff provides for the application on intrastate traffic of the York or Reform combinations when lower than the joint rates. In numerous instances the combinations are lower. To illustrate, the rate on grain, in carloads, from Meridian to Panola is 26.5 cents; the joint rate from Tuscaloosa is 25 cents, while the combination rate applicable is 23.75 cents, a difference of 2.75 cents in favor of Tuscaloosa for a greater distance than from Meridian.

Complainant maintains that the geographical location of Meridian is such that it has been necessary for its shippers to maintain representation in Alabama and endeavor to do business in spite of their disadvantage. Such success as they have had has resulted, it is testified, from resourcefulness, increased efficiency, and absorption of the rate inequalities by curtailment of profits. In order to hold customers in Alabama, Meridian dealers state that they have been obliged to offer special inducements by way of attractive credits and expedited service, whereas their Alabama competitors have been able to do a cash business because of their rate advantages. The general increase of 25 per cent in freight rates on June 25, 1918, accentuated the disadvantage of Meridian, and this is also true of the further increase recently made under authority of *Increased Rates, 1920, supra*.

Witnesses representing Meridian wholesale grocers, fertilizer manufacturers, dealers in furniture, building materials, agricultural im-

plements, ice, grain, and mixed feeds testified as to the difficulty of selling in Alabama and the diminution of their trade in that territory. This they attributed solely to the rate inequalities. Their more important competitors are located at Birmingham, Tuscaloosa, Selma, Demopolis, Mobile, and Montgomery. Numerous articles, representative of the trade of Meridian dealers, were mentioned and are shown in Appendix No. 3. Other articles shipped from Meridian to Alabama points are shown in Appendix No. 4, which is a partial compilation of voluminous abstracts of billing, submitted by defendants, covering shipments made during the months of April and October, 1916, April and October, 1918, and April, 1919.

Complainant insists that this case is, in all essential features, on all fours with the *Shreveport Case*, 23 I. C. C., 31, 48 I. C. C., 312, and that Meridian is entitled, as to every article contained in the class or commodity lists, to have the prejudice removed. It urges that the specific instances mentioned clearly illustrate the scope and effect of the disadvantages to which Meridian shippers are subjected by the present relationship of interstate and intrastate rates, and that failure of record to refer to particular commodities should not be construed as indicating that the rates thereon are not prejudicial. It is repeatedly asserted that with an equalization of rates between Meridian shippers and Alabama shippers the radius of Meridian's trade territory could be materially enlarged. The evidence shows an ability at the present time to reach, under normal conditions, such points in Alabama as Akron and Moundville on the Alabama Great Southern, 71 and 82 miles, respectively, distant from Meridian; Marion Junction on the Southern, 91 miles distant; Yellow Pine on the Mobile & Ohio, 76 miles distant; and Chatom and Aliceville on the Tennessee & Northern, distant, respectively, 106 and 79 miles. It is testified that this can be done, for the most part, only by absorbing the differences in freight rates which favor Alabama competitors.

Defendants offered no defense to the allegation of undue prejudice and are interested chiefly in having the prejudice removed by raising the intrastate rates rather than by reducing the interstate. The conclusion is irresistible that the transportation conditions do not justify a higher level of rates between Meridian and points in Alabama than intrastate in Alabama. Meridian is a thriving jobbing center, and in spite of the rate differences does business in Alabama territory. But this fact does not deprive it of the right to have rates that are not unduly prejudicial in favor of competing cities. *Board of Trade of Carrollton, Ga., v. C. of G. Ry. Co.*, 28 I. C. C., 154, 167. Clearly the rates now accorded Meridian on carload and less-than-carload traffic to and from points in Alabama are unduly

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preferential of points in that state and unduly prejudicial to Meridian—a condition which has not been justified and is unlawful.

Intervening traffic and civic organizations of Mobile, Montgomery, and Birmingham contend that the record does not warrant a finding of undue prejudice to Meridian save and except as to the commodities specified in the evidence of complainant; that it is beyond our power to find and order the removal of undue prejudice to the shippers of Meridian in respect to commodities which are not now shipped and which “under the settled principles of economics would not be shipped from Meridian to points within Alabama”; and that complainant has not shown that Meridian shippers are entitled to extend their trade beyond the neighboring territory in Alabama in which they now do business.

Quite similar contentions were made in the *Shreveport Case*, 48 I. C. C., 312, and after thorough discussion, page 360 *et seq.*, rejected by us, and again in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 58 I. C. C., 610. In the latter case we said, on page 618:

Whether or not there is an actual movement from the complaining point can not be accepted as a criterion for determining the existence or nonexistence of discrimination, for the obvious reason that the absence of actual movement may be attributable wholly to the discriminatory rate adjustment.

The evidence of record is sufficient to show that the general level of the rates in Louisiana is materially lower than the rates from and to Natchez; that in practically all instances there has been some movement from Natchez of the commodities here involved, and that shippers at Natchez are actually injured by the difference in rates.

Generally speaking, or so far as the great volume of present or even probable future traffic is concerned, the Louisiana interveners suggest that the prejudice against Natchez is not shown to be of a substantial or serious character, and that even if the rates were readjusted to the satisfaction of complainant it is not likely that there would result any great increase in business at Natchez. An undue prejudice that causes injury to a small volume of traffic is just as unlawful as one which causes injury to a large volume.

We do not say that where there is no present movement of a particular commodity between Meridian and points in Alabama, and no prospect of a substantial movement in the future, undue prejudice against Meridian could be found; but none of the rates which are hereinafter prescribed is confined to traffic of that character.

THE ISSUE OF REASONABLENESS.

Complainant's exhibit of class rates on the Southern from Meridian to 25 stations in Alabama for distances ranging from 49 to 202 miles, and from New Orleans to 25 points in Mississippi for like distances shows the Meridian rates to be higher in 189, equal in 7, and lower in 54 instances. A similar exhibit comparing class rates

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on the Southern from Meridian into Alabama with those from Memphis to points in Mississippi on the St. Louis-San Francisco Railway, for distances ranging from 28 to 128 miles, shows 139 of the Meridian rates to be higher, 19 the same, and 22 lower.

Complainant also compares, separately and by averages, the class rates of the Alabama Great Southern, the Southern, and the Mobile & Ohio which apply from Meridian to points in Alabama on their respective lines with intrastate class rates in effect in Georgia, Florida, North Carolina, South Carolina, and Virginia for distances ranging from 5 to 300 miles. These comparisons indicate that the state rates are considerably lower, but it was not shown that the classifications are similar.

On 21 representative commodities complainant shows that rates from Meridian to stations in Alabama on the Southern are in many instances conspicuously higher than rates on the same commodities for similar distances from Jackson, Miss., to points in Louisiana on the Vicksburg, Shreveport & Pacific Railway. Evidence was offered that transportation conditions are similar, and that the operating ratio of the Vicksburg, Shreveport & Pacific in 1916 was 73.39, whereas that of the Southern was 65.78. Complainant also compares the Southern's class rates and its commodity rates on brick, cottonseed hulls, fertilizer, and sand from Chattanooga, Tenn., to points in Alabama on the line running from Chattanooga to Memphis with rates of the Southern and Alabama Great Southern from Meridian into Alabama. Except in a few instances where the rates are equal, the Southern's rates for like distances are higher from Meridian than from Chattanooga. The rates of the Alabama Great Southern shown by the exhibit are lower from Meridian than the Southern's, and in many instances the same as or lower than the rates shown from Chattanooga. A similar comparison was submitted of class rates and various commodity rates from Columbus, Ga., to points in Alabama on the Central of Georgia Railroad with corresponding rates from Meridian to points in Alabama on the Southern, the Alabama Great Southern, and the Mobile & Ohio. Complainant contends that these comparisons of rates in the same general territory under similar conditions of transportation prove that the Meridian rates are too high.

The class rates and certain commodity rates from Meridian to stations on the Mobile & Ohio in Alabama are contrasted with corresponding rates for similar distances from Mobile to points on that line in Mississippi. Complainant asserts that these rates from Mobile were voluntarily established and afford a fair test of the reasonableness of the Meridian rates. On brief, especial attention is called to the following as representative of the exhibit: Rates on sugar, in carloads, from Meridian to Dwight, distance 96 miles, 41.5
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cents; from Mobile to Shubuta, distance 96 miles, 20 cents; rates on bagging and ties, in carloads, from Meridian to Yellow Pine, 76 miles, 32.5 cents; from Mobile to Chicora, 75 miles, 19 cents. It appears that in this exhibit complainant is comparing commodity rates from Mobile with class rates from Meridian, with the exception of salt in carloads; but the rates shown are in both cases those upon which the traffic moves. On salt the rates from Meridian to the specified points in Alabama for distances ranging from 76 to 169 miles are higher than the corresponding rates from Mobile to points in Mississippi in nine instances, and lower in five instances.

Witnesses for wholesale grocery dealers in Meridian testified that the only carload movements outbound in their line of business are occasional shipments of grain and flour. The carload rate on grain from Meridian to Dwight is 24 cents, on flour 30 cents; from Mobile to Shubuta the rate is 15 cents on both grain and flour. Other comparisons show the rates from Meridian to Alabama points to be materially higher than those from Mobile to points in Mississippi, in some instances 100 per cent higher.

On various representative commodities the rates prescribed by us between Shreveport, La., and Texas common points are submitted by complainant as a fair measure of rates from Meridian to Alabama points. The following is an abridgment of the exhibits comparing the Shreveport scale with rates from Meridian to points on the Alabama Great Southern, the Southern, and the Mobile & Ohio:

	Distance.	Canned goods.		Special iron and steel articles.	Baking powder, dried fruit, fruit jars, and starch.	Cement, coffee, molasses, sirups, and sugar.
		carloads.	Less carloads.			
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.
Shreveport scale.....	50	15.5	27.5	13	32	27.5
Alabama Great Southern.....	50	26.5	36.5	21.5	36.5	26.5
Southern.....	50	26.5	45	25	45	26.5
Shreveport scale.....	100	27.5	39	18.5	45	39
Alabama Great Southern.....	100	37.5	52	26.5	52	37.5
Southern.....	100	49	59	34	59	49
Mobile & Ohio.....	100	41.5	57.5	34	57.5	41.5
Shreveport scale.....	150	34	50	24	55	50
Alabama Great Southern.....	150	42.5	59.5	32	59.5	42.5
Southern.....	150	55	67.5	40	67.5	55
Mobile & Ohio.....	150	49	67.5	40	67.5	49
Shreveport scale.....	200	39	57.5	28	67.5	57.5
Alabama Great Southern.....	200	46.5	66.5	35	66.5	46.5
Southern.....	200	61.5	75	46.5	75	61.5
Mobile & Ohio.....	200	55	77.5	45	77.5	55

While rates from Meridian to points on the Tennessee & Northern are attacked as unreasonable, complainant offered little evidence to establish the fact, except in so far as the evidence relating to the reason-

ableness of the rates to points on the other lines is pertinent to the reasonableness of the factors to York and Reform.

Defendants contend that the rates assailed are reasonable and offered numerous exhibits in support of this view. Brief mention will be made of the more important.

The class rates of the Southern from Meridian to Alabama points are compared with interstate class rates for the same distances on the Atlantic Coast Line, the Mobile & Ohio south of Cairo, Ill., the Gulf, Mobile & Northern, extending from Mobile to Jackson, Tenn., the Carolina, Clinchfield & Ohio, extending from Spartanburg, S. C., to Elkhorn City, Ky., and the St. Louis-San Francisco east of Memphis. A compendium of these comparisons is given in Appendix No. 5. The statement also includes comparisons with interstate rates applying between stations in Alabama on the Nashville, Chattanooga & St. Louis, the St. Louis-San Francisco, and the Mobile & Ohio; also between points in Mississippi on the Yazoo & Mississippi Valley. The Southern's class rates compare favorably with those of the other lines.

The following table of interstate class rates is representative of a comprehensive exhibit containing 133 comparisons of rates between Meridian and Southern points in Alabama with interstate rates in southern territory where conditions are said to be similar:

From—	To—	Distance.	Classes.									
			1	2	3	4	5	6	A	B	C	D
MERIDIAN, Miss...	Lilta, Ala.....	M. 37	Cts. 50	Cts. 42.5	Cts. 40	Cts. 35	Cts. 31.5	Cts. 28.5	Cts. 25	Cts. 22.5	Cts. 20	Cts. 18.5
McComb, Miss. ¹	Amite, La.....	37	56.5	45	37.5	31.5	28.5	24	21.5	22.5	30	16.5
Dothan, Ala. ²	Lela, Ga.....	37	82.5	47.5	42.5	40	35	27.5	25	25	24	19
MERIDIAN, Miss...	Demopolis, Ala...	54	60	52.5	50	45	41.5	37.5	25	25.5	22.5	20
Roanoke, Ala. ³	Manchester, Ga...	55	60	55	50	44	38.5	36.5	25	25.5	20	19
Mobile, Ala. ⁴	Leaf, Miss.....	56	71.5	59	51.5	42.5	35	31.5	32.5	34	29	20
MERIDIAN, Miss...	Faunsdale, Ala...	70	65	57.5	52.5	47.5	44	29	27.5	27.5	24	21.5
Memphis, Tenn. ⁵	Lambert, Miss...	71	67.5	59	50	44	35	31.5	24	26.5	26.5	17.5
Tupelo, Miss. ⁶	Winfield, Ala...	67	74	64	56.5	46.5	39	34	32.5	37.5	22.5	21.5
MERIDIAN, Miss...	Burnsville, Ala...	114	79	69	62.5	56.5	51.5	36.5	31.5	32.5	29	26.5
Jasper, Ala. ⁷	Sherman, Miss...	117	91.5	80	70	59	50	41.5	40	46.5	29	26.5
Middleton, Tenn. ⁸	Mathison, Miss...	113	84	71.5	62.5	54	46.5	40	40	41.5	31	26.5
MERIDIAN, Miss...	Ashby, Ala.....	153	90	77.5	70	61.5	56.5	41.5	36.5	39	32.5	30
Spartanburg, S. C. ⁹	Johnson City, Tenn	157	90	77.5	70	62.5	56.5	42.5	40	41.5	35	32.5
Jasper, Fla. ¹⁰	Kathleen, Ga...	157	104	86.5	76.5	60	49	40	40	35	19	17.5
MERIDIAN, Miss...	Calvert, Ala.....	206	102.5	87.5	78.5	67.5	62.5	47.5	42.5	45	37.5	35
Valdosta, Ga. ¹¹	Shellhorn, Ala...	211	117.5	105	85	77.5	69	62.5	49	40	41.5	30
Middleton, Tenn. ¹²	Newton, Miss....	207	100	85	74	64	52.5	46.5	49	50	37.5	30

¹ Illinois Central R. R.² Atlantic Coast Line R. R.³ Atlanta, Birmingham & Atlantic Ry.⁴ New Orleans, Mobile & Chicago Ry.⁵ St. Louis-San Francisco Ry.⁶ Gulf, Mobile & Northern R. R.⁷ Carolina, Clinchfield & Ohio R. R.⁸ Georgia Southern & Florida R. R.

Defendants show that carload commodity rates of the Southern from Meridian to points on its line in Alabama compare favorably with carload rates in Carolina territory on like commodities, such as cement, cotton, cotton seed, fertilizer, ice, iron and steel articles, 60 L. C. C.

lime, live stock, lumber, stone, pipe, and plaster. The distances for which rates are given range from 5 to 140 miles. Defendants publish but few commodity rates on articles moving from Meridian in less-than-carload quantities. Class rates govern such shipments as a rule, and the record indicates that they are the shipments in which complainant is chiefly interested.

Defendants, like complainant, use the rates prescribed by us from Shreveport to Texas common points in comparison with rates on various commodities from Meridian to points in Alabama on the Southern.

The class rates of the Alabama Great Southern from Meridian to points on its line in Alabama are compared with class rates between other points selected here and there throughout the south for similar distances. The following table fairly illustrates the exhibit:

From—	To—	Dis- tance.	Classes.									
			1	2	3	4	5	6	A	B	C	D
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
MERIDIAN, Miss..	Boligee, Ala.....	59	59	50	41.5	32.5	30	24.5	22.5	24	20	17
Tallapoosa, Ga.....	Munford, Ala.....	53	60	52.5	50	45	41.5	27.5	25	26.5	22.5	20
MERIDIAN, Miss..	Akron, Ala.....	71	69	59	48	37.5	35	28	25	27	28	19
Athens, Tenn.....	Sugar Valley, Ga..	70	65	57.5	52.5	47.5	44	29	27.5	27.5	24	21.5
MERIDIAN, Miss..	Coaling, Ala.....	111	79	69	55.5	42.5	40	30.5	26.5	29.5	25.5	21.5
Middleton, Tenn..	Mathison, Miss..	113	84	71.5	62.5	54	48.5	40	40	41.5	34	26.5
MERIDIAN, Miss..	Springville, Ala..	180	89	79	63	47.5	45	34.5	27.5	32	28	24
Atlanta, Ga.....	Nioga, Tenn.....	174	95	81.5	72.5	64	59	44	39	41.5	35	31.5

The exhibit contains 83 other comparisons, most of them of similar tenor. In a further exhibit, commodity rates of the Alabama Great Southern from Meridian into Alabama on common brick, fire brick, box material, lumber, laths, staves, shingles, cement, cottonseed meal, fertilizers, ice, iron and steel articles, lime, live stock, pipe, plaster, salt, and stone are compared with and shown to be lower than rates of the New York Central Railroad on like traffic for similar distances. All rates stated apply on carload quantities with the exception of those on fertilizers. Meridian is a fertilizer manufacturing point and ships the product into Alabama on less-than-carload commodity rates.

While the rates of the Mobile & Ohio are attacked as well as those of the direct lines, the Southern and the Alabama Great Southern, the testimony indicates that the rates via this indirect line are of lesser importance to Meridian. There is, it seems, little difference between the rates of the Mobile & Ohio and those of the Southern.

PROPOSED SCALES.

Subsequent to the first hearing the Southern and certain other carriers submitted a petition to the Alabama Public Service Com-

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mission for approval of a revision of all intrastate freight rates in Alabama. The petition was accompanied by proposed scales of class and commodity rates. It was withdrawn upon the advent of federal control, but defendants herein, with the exception of the Tennessee & Northern, have proposed the same scales, increased approximately in accordance with the provisions of General Order No. 28, for application between Meridian and Alabama points.

The scales proposed for the Mobile & Ohio are somewhat higher than those proposed for the Southern and the Alabama Great Southern, which are identical. The Alabama territory traversed by the Mobile & Ohio is sparsely settled and local traffic light. Its line from Artesia, Miss., to Montgomery is handicapped by exceptional operating difficulties, including severe grades and numerous curves; moreover, the cost of its construction was heavy and the expense of maintenance is burdensome. This line was built in 1897 and 1898 and exhibits were submitted tending to show that during all but 5 of the 19 years from 1899 to 1918 it has been operated at a loss. For the year ended June 30, 1914, the respective operating ratios of the Southern and the Mobile & Ohio were 72.73 and 77.65. That year was selected by defendants as typifying normal conditions prior to the outbreak of the world war. In 1919 the Mobile & Ohio ratio was 102.6. Neither complainant nor interveners protested against the proposal to apply higher rates on the Mobile & Ohio than on the Southern and Alabama Great Southern.

The scales proposed for application on the Alabama Great Southern and Southern extend to 400 miles. While the complaint, which is in general terms, is broad enough to cover rates to any point in Alabama, and defendants argue that the relief granted should be as broad as the complaint in this respect, the record indicates that scales limited to 200 miles will afford adequate correction of the undue prejudice to Meridian shippers. Such a finding was recommended in the proposed report, and complainant did not except thereto. Moreover, there is little evidence in regard to the reasonableness of rates for distances in excess of 200 miles.

In the proposed report the examiner stated that the rates of the Tennessee & Northern are the same from the junction points of York and Reform whether the traffic originates at Meridian or at one of the Alabama competing points, and recommended a finding that the application of a uniform scale of rates to York and Reform, plus the uniform local rates of the Tennessee & Northern, would remove the undue prejudice existing. As we have seen, the rates of the Tennessee & Northern for interstate application are substantially higher than its intrastate rates. Complainant excepted to the finding proposed by the examiner, pointing out the error upon which it

was based and contending that the uniform application of the intra-state rather than the interstate scale would be more equitable in constructing the through rates. As supporting this contention it is to be observed that the intrastate class rates of the Tennessee & Northern are substantially higher than the class rates proposed by defendants for the Southern and Alabama Great Southern, and as a rule compare favorably with those proposed for the Mobile & Ohio. The same is, in general, true with respect to the comparatively few intrastate commodity rates applicable on the Tennessee & Northern.

Defendants state that the measure of the proposed rates on classes and commodities was determined largely by the revised interstate rates from Memphis, New Orleans, Mobile, Pensacola, and south Atlantic ports to points in Mississippi, Alabama, Georgia, and other states, published effective January 1, 1916, as a result of our decision in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153; 32 I. C. C., 61. They claim that the rates which they propose are generally lower than the present Meridian rates, and will in the aggregate yield less revenue, and that they provide a better alignment between the various classes and commodities. The preponderance of traffic between Meridian and Alabama points moves on class rates. As indicating the effect which the adoption of the proposed class rates would have, the following comparison is compiled from defendants' exhibits showing the present class rates of the Southern and the Alabama Great Southern for distances of from 25 miles to 200 miles, and the proposed class rates:

	Distance.	Classes.									
		1	2	3	4	5	6	A	B	C	D
Present:	Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Southern.....	25	42.5	35	32.5	29	25	20	19	20	17.5	14
Alabama Great Southern.....	25	36.5	31.5	28.5	21.5	19	15	15	16.5	12.5	11.5
Proposed.....	25	39	34	30	25	20	17.5	14	15	11.5	9
Present:											
Southern.....	50	55	47.5	45	40	36.5	25	24	24	21.5	19
Alabama Great Southern.....	50	51.5	44	38.5	29	26.5	21.5	20	21.5	17.5	15
Proposed.....	50	52.5	45	40	34	27.5	23.5	19	21.5	14.5	11.5
Present:											
Southern.....	75	69	60	55	50	46.5	31.5	27.5	27.5	25	21.5
Alabama Great Southern.....	75	69	59	48	37.5	35	28	25	27	23	19
Proposed.....	75	65	56.5	50	41.5	34	29	22.5	26.5	18.5	13
Present:											
Southern.....	100	74	65	59	52.5	49	34	30	30	27.5	24
Alabama Great Southern.....	100	74	64	53	40	37.5	29.5	25.5	28	24.5	20
Proposed.....	100	76.5	65	57.5	49	40	34	26.5	30	17.5	14.5
Present:											
Southern.....	150	87.5	78	67.5	60	55	40	35	37.5	32.5	29
Alabama Great Southern.....	150	84	74	59.5	45	42.5	32	27	30.5	27	22.5
Proposed.....	150	89	76.5	67.5	56.5	46.5	39	30	34	21.5	17.5
Present:											
Southern.....	200	100	85	75	66.5	61.5	46.5	41.5	44	36.5	34
Alabama Great Southern.....	200	91.5	81.5	66.5	49	46.5	35	28	32.5	29	24.5
Proposed.....	200	101.5	87.5	77.5	65	62.5	46	33	37.5	26	20.5

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In the case of the Southern, of the 60 representative comparisons above shown, in 50 instances the proposed class rates produce reductions, ranging from 1 cent to 18.5 cents, and in 6 instances increases of 1.5 or 2.5 cents, all the increases being in the first three classes for distances of 100, 150, or 200 miles. In 4 instances the proposed rates are the same as the present rates. In the case of the Alabama Great Southern, the proposed rates would effect increases in 39 instances, ranging from 1 cent to 11.5 cents, and reductions in 20 instances, ranging from 1 cent to 7 cents. In 1 instance the rate would remain unchanged. The proposed rates are uniformly lower than the present rates of both the Southern and the Alabama Great Southern for classes C and D.

On the traffic which moved from Meridian to points in Alabama on the Southern during the months of August and November, 1918, and February and May, 1919, the revenue under the present rates was \$4,534.55, while under the proposed class and commodity rates it would have been \$4,640.93. The increases would have aggregated \$364.73 and the reductions \$258.35, leaving a net increase of \$106.38. The chief increases would have been \$180 on 10 carloads of lumber to Anniston and \$73.51 and \$104.37 on the traffic to Demopolis and Selma, respectively, to which two points the proposed rates are generally higher than the present rates, which are lower than the rates to intermediate points. Eliminating these three exceptional instances, the net reduction under the proposed rates would have been \$251.50, or 5.5 per cent. With comparatively few exceptions the shipments were in less-than-carload lots taking class rates. They were numerous and included many different commodities. No similar comparison was offered to show the effect which the proposed rates would have upon the revenue of the Alabama Great Southern from its Meridian traffic; nor was any evidence submitted to show the effect of the proposed rates upon the revenue of any of the defendants from intrastate traffic in Alabama.

In support of the reasonableness of the proposed class rates for the Southern and Alabama Great Southern, defendants made numerous comparisons with present class rates from such points as Chattanooga, Tenn., Atlanta and Rome, Ga., Charleston, S. C., and Jacksonville, Fla., to interstate destinations on the Southern, the Seaboard Air Line, the Atlantic Coast Line, and the Georgia Southern & Florida railroads, in Alabama, Georgia, Florida, and Tennessee. An analysis of the exhibits, considering distances not exceeding 200 miles, shows 1,990 comparisons, in 1,220 of which the proposed rates

are the same or less, in many cases materially less, than the rates contrasted, and in 270, greater by amounts ranging from 0.5 cent to 2.5 cents. In a few cases the increases are as high as 4 or 5 cents. With few exceptions, the increases are found in the first and second classes and, to a lesser extent, in the third class. Various other comparisons of similar purport were offered. No evidence was offered showing to what extent traffic actually moves on the scales with which comparison is made. Apparently some of them are so-called maximum mileage scales used only where no other rates apply.

The proposed class scales appear to be higher than the class scale prescribed in the second *Shreveport Case*, 48 I. C. C., 312, for application between Shreveport and points in Texas common point territory, increased by 25 per cent, which was also prescribed, as thus increased, in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105, for application between Natchez, Miss., and points in western Louisiana. The Shreveport scale, however, is governed by the western classification, which, on the whole, has higher ratings than the southern classification, a fact recognized in *Consolidated Classification Case*, 54 I. C. C., 1. The exhibit, previously referred to, relating to the actual traffic for four months from Meridian to points in Alabama on the Southern, shows that the revenue under the Shreveport scale, increased by 25 per cent, would have been approximately 3 per cent higher than the revenue under the present Meridian rates. Such evidence as was offered does not show that transportation conditions are substantially more favorable in Alabama than in western Louisiana or northeastern Texas. The Shreveport scale has been increased 85 per cent under the authority granted in *Increased Rates, 1920, supra*, whereas the increase in the Meridian rates has been but 25 per cent.

The proposed commodity rates cover 66 different commodity groups. In support of their reasonableness, a multitude of comparisons with other rates were offered, among them being the commodity rates prescribed in the second *Shreveport Case*, increased by 25 per cent. In the following table, we have taken various articles mentioned in complainant's testimony as shipped from Meridian into Alabama and have compared for the distance of 100 miles the present rates, the proposed rates, the rates under the Shreveport scale, increased 25 per cent, and the intrastate rates of the Southern in Alabama.

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Commodities.	Rates.			
	Present.	Proposed.	Shreveport scale increased.	Southern intra-state.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Agricultural implements, c. l.	34	28	34	29
Bagging, c. l.	30	22	30.5	25
Brick, common, c. l.	10	6	4.5	3.5
Canned goods, c. l.	49	29	27.5	22.5
Canned goods, l. c. l.	59	42	45	29
Cottonseed hulls, c. l.	12.5	9.5	9.5	7
Cotton ties, c. l.	30	16.5	30.5	19.5
Fertilizer, c. l.	12.5	8	9	9.5
Ice, c. l.	11.5	8.25	9	8.5
Molasses and sirup, c. l.	49	21	31.5	19.5
Molasses and sirup in wood, l. c. l.	49	26	39	19.5
Potatoes, c. l.	34	22.5	19	14
Sand, c. l.	9	4.25	4.5	4.5

The comparisons for other distances are similar.

Evidence presented by defendants indicates also that the proposed commodity rates compare favorably with similar rates to and from other jobbing points in the southeast to interstate destinations. At the present time about 20 commodities, under exceptions to the southern classification, are rated in classes K, L, M, N, O, and P, which are lower than the ratings in the classification. The proposed adjustment contemplates a cancellation of these exceptions, but places such articles on a commodity-rate basis lower than the normal class rates. It is also proposed to place a number of commodities on a lower classification basis than is provided therefor in the southern classification.

Both the class and the commodity rates proposed by defendants have notably irregular steps of progression. An instance of this will be found in the scale for commodity group No. 4 for the Mobile & Ohio. There is a consistent advance for each 5 miles up to 50 miles, but for the next 80 miles the proposed rate remains at 27.5 cents, followed by an advance to 30 cents for the next 10 miles. In many instances the steps of progression, contrary to the usual rule, grow larger as the distance increases. Also there is no uniform relationship between the rates proposed for the Mobile & Ohio and those proposed for the Southern and the Alabama Great Southern. Owing to this irregularity, the examiner in his proposed report recommended revised scales with uniform relationships and steps of progression, the rates for the Mobile & Ohio being 110 per cent of those for the Southern and the Alabama Great Southern.

In one important respect the situation has changed materially since the hearings were held. At that time defendants laid much stress upon their financial condition, stating that it would not permit of

any lower level of rates than that which they propose. Detailed evidence was submitted with respect to increases in wages and prices, also comparisons of net earnings and operating ratios for the first four months of 1918 and 1919. In *Increased Rates, 1920, supra*, since decided, large increases in rates were authorized for the very purpose of overcoming these unfavorable conditions and producing net earnings in southern territory consistent with the provisions of the transportation act, 1920. At the present time, therefore, depression in earnings can not well be offered as a reason for adopting the basis of rates proposed by defendants.

The case has a possible importance which goes beyond the immediate situation with which it deals. In their brief upon rehearing, defendants state that it is "the first case in which the Commission has been called upon to prescribe a reasonable maximum mileage scale in the interior south." They go on to say that any scale which we may fix in this case "is bound to be the basis of comparison in future cases involving similar rates," and is almost certain to become "the criterion by which will be determined the reasonableness of all other class and commodity rates between points in the south for the shorter distances."

This possibility was emphasized by the interveners. They point out that the important distributing rates from jobbing centers in the south are largely intrastate, and that they have been fixed by the various state authorities upon a lower level than the corresponding interstate rates, which, they say, are of lesser importance and have seldom been the subject of public regulation. While the intrastate rates of Alabama are lower than the interstate rates from Meridian, interveners claim that they are not lower than the similar rates of other southern states. They fear, therefore, that in this proceeding the complaint of a single city will result not only in condemning the Alabama rates but in the sanctioning of a new and higher basis of rates which will gradually spread, by force of precedent, throughout the south without adequate consideration of the situation as a whole.

Clearly, defendants have not been hostile to the complaint of Meridian and have done what they could to shape the proceedings so that the fabric of state rates in Alabama might be changed in favor of rates at a higher level. The rates which they propose, as we have already seen, would leave the revenue on traffic to and from Meridian practically untouched and at the same time increase materially the revenue from intrastate traffic in Alabama. What this increase would amount to no one has ventured to estimate, but clearly it would be substantial; and if the same basis of rates should gradually be extended throughout the south, in accordance with defend-

ants' anticipations, the gain in revenue to the southern carriers, over and above the increases authorized in *Increased Rates, 1920, supra*, would be large.

The case has been one, in short, in which the defendants have been such in name rather than in fact, and the burden of the defense has rested upon the interveners. It has been one in which we have not had the benefit of final argument, nor of any brief from interveners upon the evidence taken at the supplementary hearings. Moreover, the general situation has changed radically since the case was submitted.

Indications multiply that the entire structure of interstate and intrastate rates in the south is likely to become the subject of future investigation and consideration. Under all the circumstances, we agree with interveners that it would be unfortunate if we should now attempt, upon the restricted record of this case, to work out carefully balanced scales of short-distance class and commodity rates which could be used as the "criterion" for further reconstruction in the southern territory. On the other hand, complainant has clearly shown that the city of Meridian is now subjected to undue prejudice and the removal of that prejudice is a matter which should no longer be delayed. The immediate problem, therefore, is to effect such readjustment as the present record appears to justify, without undue influence upon any more extensive process of rate reconstruction which may later prove desirable in connection with a consideration of the southern situation as a whole.

As already shown, the Alabama Great Southern has the same class-rate scale both interstate from Meridian to Alabama points and intrastate in Alabama. In general, it is lower than the interstate scale of the Southern and lower, also, than the scale proposed by defendants, with the exception of the rates in classes C and D. In view of the increases authorized in *Increased Rates, 1920, supra*, we do not think that defendants have justified, for application interstate and intrastate within the territory in question, a scale of class rates higher than that now in effect on the Alabama Great Southern modified by the substitution of the proposed rates in classes C and D, except that on the Mobile & Ohio the rates may be 10 per cent higher. The change in the class C and class D carload rates is made necessary in order that the scale may be linked with greater harmony to the new commodity-rate adjustment. Class rates on this modified basis are set forth in Appendix No. 6. It is recognized that the class relationships and steps of progression may be susceptible to criticism, but the record is so lacking in evidence upon these matters that we do not think it desirable to attempt to perfect the scale at this time. As aforesaid, it is a scale adopted to meet the

immediate needs of the situation before us rather than as a model for future and more extensive rate adjustments.

Passing to commodity rates, we find that the preponderance of evidence, most of which was offered by defendants, is in favor of the group scales which they propose, with certain minor changes. For coal and coke, in carloads, defendants propose two scales, shown under commodity groups Nos. 21 and 21A, but fail to explain how these are to be applied. There seems no need for two sets of rates on these commodities and as the two scales proposed do not differ materially we think that No. 21A should be eliminated.

Silo tile is listed under commodity group No. 48 and hollow building tile under No. 11. Rates on the former are higher than on the latter. On behalf of the Southern Sewer Pipe Works it is contended that the rates should be the same; that silo tile is practically building tile, loads the same, and is shipped on building-tile rates in western and official classification territories. We think both commodities should take group No. 11 rates.

It is proposed to rate cottonseed meal and cake, in packages, any quantity, or in bulk, c. l., minimum 40,000 pounds, class D. The application of the proposed class D rates would result in substantial increases over the present commodity rates from Meridian. To seven points on the Alabama Great Southern, ranging in distance from 21 to 71 miles, the increases would amount to from 84.6 to 125 per cent on cottonseed meal in carloads, to from 28.5 to 43.7 per cent on cottonseed cake in carloads, and to from 4 to 20 per cent on cottonseed meal and cake in less than carloads. The southern classification rates cottonseed meal and cake, in bags, l. c. l., 120 per cent of carload fertilizer rates, and in bags or bulk, c. l., minimum weight 40,000 pounds, fertilizer rates, or sixth class in the absence of fertilizer rates, and complainant contends that in no event should the respective carload and less-than-carload fertilizer rates be exceeded. On this record we find no justification for exceeding the fertilizer rates.

On "fertilizer and fertilizer materials, rated 'c. l. fertilizer rates' in southern classification, except as specifically published in individual items in these exceptions," the rates under group 29 applying per net ton are proposed for carloads, minimum 30,000 pounds, and rates 20 per cent higher for less than carloads. Complainant contends that the rates should not exceed those prescribed by us in *Royster Guano Co. v. A. C. L. R. R. Co.*, 50 I. C. C., 34, for application on fertilizer, in carloads, from Norfolk, Va., to points in North Carolina, increased by 25 per cent. The following comparison of rates, in cents per net ton, on fertilizer in carloads, illustrates this contention.

60 I. C. C.

Distance.	(1)	(2)	(3)	(4)
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
25	140	200	150	-----
35	140	200	180	140
50	160	230	190	160
75	190	250	230	190
100	220	280	250	230
150	280	300	280	260
200	310	350	310	300

(1) Present rates from Meridian to points in Alabama on Alabama Great Southern.

(2) Present rates from Meridian to points in Alabama on Southern.

(3) Proposed rates for application from Meridian to points in Alabama on Alabama Great Southern and Southern.

(4) Rates prescribed in *Rogers Guano Co. Case*, *supra*, increased by 25 per cent.

While complainant does not show that transportation conditions justify as low a basis of rates from Meridian to points in Alabama as from Norfolk to points in North Carolina, no sufficient reason is offered of record for exceeding the rates now in effect from Meridian to points in Alabama via the Alabama Great Southern. We are of opinion that the rates in group 29 should be changed accordingly. The less-than-carload rates on fertilizers should be 120 per cent of the carload rates, as proposed by defendants and as provided in Appendix No. 6.

Defendants propose no ratings on live stock in less than carloads, stating that this matter is under investigation in Investigation and Suspension Docket No. 956 and that the carriers will ask the Alabama Public Service Commission to approve for use between points in Alabama the ratings prescribed by us in that proceeding. The case referred to was decided on November 28, 1917, and is reported in 47 I. C. C., 335, under the title *Live Stock Classification*. At present live stock in less than carloads from Meridian to points in Alabama on the Southern, Alabama Great Southern, and Mobile & Ohio takes class rates as provided in the southern classification, and the classification ratings are in accordance with our decision in the case cited. The class rates are not, in our opinion, unreasonable as applied to this traffic.

The proposed commodity rates and descriptions, as revised by the examiner and with the changes above indicated, are set forth in Appendix No. 6.

Upon the record before us we find that the respective class and commodity rates of the Southern, the Alabama Great Southern, and the Mobile & Ohio between Meridian, Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, on the one hand, and points in Alabama not more than 200 miles distant from Meridian on the lines of the same respective carriers, on the other, are and for the future will be unduly prejudicial to Meridian and unduly preferential of Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa to the extent that the rates maintained by them between Meridian and said points in Alabama exceed the rates contemporaneously maintained by said defendants on like traffic for like distances be-

tween Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, and said points in Alabama; and that the class and commodity rates of the defendants between Meridian, Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, on the one hand, and points on the Tennessee & Northern, on the other, are and for the future will be unduly prejudicial to Meridian and unduly preferential of the named Alabama points to the extent that the rates maintained by them between Meridian and points on the Tennessee & Northern exceed the rates contemporaneously maintained by said defendants on like traffic for like distances between Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa and said points on the Tennessee & Northern.

We further find that the class and commodity rates between Meridian and points in Alabama on the Southern, Alabama Great Southern, and Mobile & Ohio for distances not in excess of 200 miles for the future will be unreasonable to the extent that they exceed the rates set forth in Appendix No. 6 for application on like traffic, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates.

We further find that the carload rates on agricultural implements rated sixth class in southern classification, building material as described in A. T. & N. R. R. exceptions to southern classification, and cotton seed, between Meridian and points on the Tennessee & Northern by way of the Alabama Great Southern or Southern in connection with the Tennessee & Northern, for the future will be unreasonable to the extent that they exceed the respective rates published in A. G. S. R. R. tariff I. C. C. No. 1430 on agricultural implements, building material, and cotton seed, in carloads, between the same points, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates; that the carload rates on building material as described in said exceptions, and cotton seed, between Meridian and points on the Tennessee & Northern for the future will be unreasonable to the extent that they exceed rates composed of the rates found reasonable herein for application on like traffic between Meridian and Reform and the distance rates published in A. T. & N. R. R. tariff I. C. C. No. 49 on building material and cotton seed, respectively, in carloads, between Reform and other points on the Tennessee & Northern, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates; that the carload rates on grain, common and fire brick, coal, hay, household goods, lumber and logs, hollow-tile silos, knocked down, sand, gravel, and chert, between Meridian and points on the Tennessee & Northern by way of the Southern, Alabama Great Southern, or Mobile & Ohio, in connection with the Tennessee & Northern, for the future will be

unreasonable to the extent that they exceed rates composed of the rates found reasonable herein for application on like traffic between Meridian and the junction points of the Southern, Alabama Great Southern, and Mobile & Ohio with the Tennessee & Northern, and the distance rates published on like traffic between said junction points and other points on the Tennessee & Northern in A. T. & N. R. R. tariff I. C. C. No. 49, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates; that the rates on cotton, in bales, between Meridian and points on the Tennessee & Northern by way of the Alabama Great Southern, Southern, or Mobile & Ohio, in connection with the Tennessee & Northern, for the future will be unreasonable to the extent that they exceed rates composed of the rates found reasonable herein for application on like traffic between Meridian and the junction points of the Alabama Great Southern, Southern, and Mobile & Ohio with the Tennessee & Northern, and the distance rates on like traffic between said junction points and other points on the Tennessee & Northern published in A. T. & N. R. R. tariff I. C. C. No. 47, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates; and that on all other traffic, except live stock, in carloads, between Meridian and points on the Tennessee & Northern the rates for the future will be unreasonable to the extent that they exceed rates composed of the rates found reasonable herein for application on like traffic between Meridian and the junction points of the Alabama Great Southern, Southern, and Mobile & Ohio with the Tennessee & Northern, and the distance rates published in A. T. & N. R. R. tariff I. C. C. No. 49 between said junction points and other points on the Tennessee & Northern on the respective class under which the commodity is rated in the southern classification and the Tennessee & Northern's exceptions thereto, increased in accordance with *Increased Rates, 1920, supra*, which rates we find will be just and reasonable maximum rates.

On live stock in carloads the record is insufficient to enable us to determine what would be reasonable maximum rates between Meridian and points on the Tennessee & Northern.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting.

The situation clearly needs correction, but not, as I see it, the kind of correction that is given by the majority report and order. The composite scale of class rates here prescribed perpetuates existing and creates new incongruities in class relationship, adds one more to the multiform scales prevalent in the south, and in purpose and effect reduces interstate rates in order to offset increases in intrastate rates which have become necessary.

APPENDIXES.

APPENDIX 1.

Rates in cents per 100 pounds.

[A—Intrastate in Alabama. B—Interstate, Meridian to Alabama points.]

Classes.																				
Miles.	1		2		3		4		5		6		A		B		C		D	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B	A	B
{ 25 {	{ 38.5 42.5	{ 38.5 42.5	{ 31.5 35	{ 31.5 35	{ 36.5 32.5	{ 36.5 32.5	{ 21.5 29	{ 21.5 29	{ 19 25	{ 19 25	{ 24.5 24.5	{ 24.5 24.5	{ 15 17.5	{ 15 17.5	{ 16.5 20	{ 16.5 20	{ 12.5 12.5	{ 12.5 12.5	{ 11.5 11.5	{ 11.5 14
{ 50 {	{ 51.5 52.5	{ 51.5 55	{ 44 45	{ 44 45	{ 36.5 45	{ 36.5 45	{ 29 39	{ 29 39	{ 24.5 35	{ 24.5 35	{ 21.5 22.5	{ 21.5 22.5	{ 20 24	{ 20 24	{ 21.5 24	{ 21.5 24	{ 17.5 16.5	{ 17.5 16.5	{ 15 15	{ 15 19
{ 75 {	{ 60.5 71.5	{ 60 71.5	{ 59 60	{ 59 60	{ 48 55	{ 48 55	{ 37.5 50	{ 37.5 50	{ 35 46.5	{ 35 46.5	{ 28 31.5	{ 28 31.5	{ 25 34	{ 25 34	{ 27.5 36.5	{ 27.5 36.5	{ 23 25	{ 23 25	{ 19 19	{ 19 21.5
{ 100 {	{ 74 75	{ 74 75	{ 64 65	{ 64 65	{ 52 54	{ 52 54	{ 40 45	{ 40 45	{ 37.5 49	{ 37.5 49	{ 29.5 34	{ 29.5 34	{ 25.5 35	{ 25.5 35	{ 28 37.5	{ 28 37.5	{ 24.5 26.5	{ 24.5 26.5	{ 20 19	{ 20 24
{ 150 {	{ 84 87.5	{ 84 87.5	{ 74 75	{ 74 75	{ 59.5 67.5	{ 59.5 67.5	{ 45 60	{ 45 60	{ 42.5 55	{ 42.5 55	{ 32 40	{ 32 40	{ 27 35	{ 27 35	{ 30.5 44	{ 30.5 44	{ 27.5 30	{ 27.5 30	{ 22.5 24	{ 22.5 26.5

APPENDIX 3.

Agricultural implements of various kinds.	Fertilizer.	Peas.
Automobile tires.	Fruits—dried and green.	Potatoes.
Bags—cotton and paper.	Furniture.	Roofing paper.
Bagging.	Grain and grain products.	Salt.
Barrels and kegs.	Groceries—all kinds.	Sash, doors, and frames.
Brick—common and fire.	Hardware.	Shingles.
Buckets.	Harness and saddles.	Soap, soap powders, and washing compounds.
Cement.	Hay.	Sugar.
Cotton.	Ice.	Tobacco.
Cotton goods.	Laths.	Vinegar.
Cottonseed meal and hulls.	Leather goods.	Wagons and parts.
Cotton ties.	Lime.	Wearing apparel.
Earthenware.	Lumber.	Wire.
Fencing.	Meal and hominy.	
	Molasses.	
	Paper.	

APPENDIX 4.

Boilers.	Glass.	Notions.
Bottles.	Guano.	Paints.
Brooms.	Hides.	Peanuts.
Candy.	Horses.	Petroleum products.
Cash registers.	Hose.	Rice.
Castings.	Household goods.	Rope.
Cattle.	Incubators.	Roofing.
Chain.	Leather.	Scrap metal.
Chewing gum.	Lubricating oil.	Seed.
Cinders.	Machinery.	Sewing machines.
Cotton linters.	Marble.	Shades.
Drugs.	Meats and packing-house products.	Shoes.
Drums.	Milk.	Trunks.
Dry goods.	Mineral water.	Vegetables.
Electric supplies.		Wheels and axles.

APPENDIX 5.

Class rates from Meridian, Miss., to Southern Railway stations, in Alabama, compared with class rates of Southern Railway and of other lines in the South generally.

[For alphabetical references, see explanatory notes.]

Distance.		1	2	3	4	5	6	A	B	C	D
25 miles.....	A	42.5	35	32.5	29	25	20	19	20	17.5	14.
	B	42.5	37.5	35	30	26.5	20	20	20	16.5	14
	C	50	45	40	37.5	32.5	25	24	21.5	20	16.5
	D	42.5	37.5	35	30	26.5	22.5	20	20	16.5	14
	E	51.5	49	42.5	37.5	31.5	27.5	26.5	27.5	21.5	16.5
	F	46.5	40	35	30	25	21.5	21.5	26.5	19	15
	G	49	42.5	37.5	30	26.5	21.5	21.5	26.5	16.5	16.5
	H	44	37.5	34	29	27.5	26.5	26.5	26.5	16.5	16.5
	I	45	36.5	31.5	26.5	22.5	20	19	22.5	15	15
	J	45	39	32.5	27.5	24	21.5	20	24	25	12.5
	K	45	40	34	29	25	21.5	22.5	25	17.5	12.5
50 miles.....	A	55	47.5	45	40	36.5	25	24	24	21.5	19
	B	55	49	45	40	36.5	25	25	25	21.5	19
	C	57.5	52.5	47.5	42.5	37.5	30	30	26.5	25	20
	D	55	49	45	40	36.5	26.5	24	25	21.5	19
	E	67.5	60	52.5	44	36.5	32.5	32.5	34	27.5	21.5
	F	64	55	49	41.5	35	29	29	32.5	25	20
	G	64	55	47.5	40	34	26.5	29	34.5	20	20
	H	56.5	49	42.5	39	35	32.5	32.5	32.5	17.5	17.5
	I	62.5	51.5	44	36.5	30	26.5	25	26.5	17.5	17.5
	J	62.5	52.5	44	37.5	31.5	27.5	24	30	29	14
	K	62.5	54	44.5	37.5	31.5	27.5	29	31.5	23.5	14

60 I. C. C.

Class rates from Meridian, Miss., to Southern Railway stations, in Alabama, etc.—Continued.

Distance.		1	2	3	4	5	6	A	B	C	D
75 miles.....	A	69	60	55	50	46.5	31.5	27.5	27.5	25	21.5
	B	70	60	55	50	46.5	31.5	31.5	31.5	25	22.5
	C	69	62.5	56.5	52.5	45	35	34	30	29	24
	D	70	60	55	50	46.5	32.5	30	31.5	25	22.5
	H	64	55	49	42.5	39	36.5	36.5	36.5	19	19
	I	75	64	51.5	44	36.5	30	27.5	29	19	19
	J	70	59	50	44	35	31.5	26.5	35	32.5	17.5
	K	71.5	60	52.5	44	36.5	31.5	34	36.5	25	17.5
	A	74	65	59	52.5	49	34	30	30	27.5	24
	B	75	65	59	52.5	49	34	34	34	27.5	25
100 miles.....	C	77.5	69	61.5	55	47.5	37.5	34	32.5	29	24
	D	75	65	59	52.5	49	35	32.5	34	27.5	25
	I	82.5	70	58.5	46.5	39	31.5	29	31.5	19	19
	J	75	65	55	46.5	37.5	34	30	37.5	35	20
	K	75	62.5	54	45	37.5	32.5	35	37.5	26.5	19
	A	87.5	75	67.5	60	55	40	35	27.5	32.5	29
	B	87.5	75	67.5	61.5	55	40	40	40	34	31.5
	C	90	77.5	72.5	64	56.5	46.5	37.5	37.5	29	24
150 miles.....	D	87.5	75	67.5	61.5	55	41.5	39	40	34	31.5
	I	90	77.5	62.5	51.5	42.5	32.5	30	34	20	20
	J	82.5	71.5	59	50	41.5	37.5	31.5	41.5	37.5	22
	K	87.5	74	64	54	47.5	41.5	41.5	44	30	21.5

EXPLANATORY NOTES.

A—Southern Railway, applying on interstate traffic between stations on Southern Railway, stations in Alabama, Georgia (except Atlanta division, Deercourt to Atlanta and branches), Mississippi, and Tennessee, Middlesboro, Ky., Fonde, Ky., and Bristol, Va.-Tenn., and also between Southern Railway stations above and Southern Railway Company in Mississippi stations.

B—Southern Railway, applying on interstate traffic between stations on Southern Railway east of Paint Rock, N. C.-Tenn., and Atlanta, Ga., and north of Augusta, Ga., and Savannah, Ga.; and stations on Southern Railway west of Paint Rock, N. C.-Tenn., and north, west, and south of Atlanta, Ga., and west and south of Savannah, Ga.; and Southern Railway Company in Mississippi stations.

C—Atlantic Coast Line Railroad, applying between stations on Atlantic Coast Line Railroad south of Charleston, S. C. (except stations in Georgia west of Bainbridge, Ga., and stations in Alabama and between Atlantic Coast Line Railroad stations in Georgia and High Springs, Monticello, and River Junction, Fla., and stations in Florida north of Jacksonville, Gainesville, High Springs, Monticello, Fanlew, and River Junction except stations from Milldale to Perry, inclusive).

D—Carolina, Clinchfield & Ohio Railway, applying on interstate traffic between all stations on Carolina, Clinchfield & Ohio Railway.

E—Gulf, Mobile & Northern Railroad, applying on interstate traffic between stations on Gulf, Mobile & Northern Railroad.

F—Mobile & Ohio Railroad, applying between Mobile & Ohio Railroad stations south of Cairo, Ill.

G—St. Louis-San Francisco Railway, applying on interstate traffic between St. Louis-San Francisco Railway stations in Alabama, Mississippi, and Tennessee.

H—Nashville, Chattanooga & St. Louis Railway, applying between points on Nashville, Chattanooga & St. Louis Railway in Alabama.

I—St. Louis-San Francisco Railway, applying between points in Alabama on intrastate traffic.

J—Yazoo & Mississippi Valley Railroad, applying between points on Yazoo & Mississippi Valley Railroad in Mississippi.

K—Mobile & Ohio Railroad, applying between stations on Mobile & Ohio Railroad in Alabama on intrastate traffic.

APPENDIX 6.

CLASSES.

[K—Alabama Great Southern Railroad and Southern Railway. Y—Mobile & Ohio Railroad.]

Miles.	1		2		3		4		5		6		A		B		C		D	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	25	27.5	21.5	23.5	19	21	16	17.5	13	14.5	11	12	9	10	10	11	8	9	6.5	7
10 and over 5.....	25	27.5	21.5	23.5	19	21	16	17.5	13	14.5	11	12	9	10	10	11	8	9	6.5	7.5
15 and over 10.....	29	32	25	27.5	21.5	23.5	17.5	19.5	15	16.5	12	13	12.5	14	14	15.5	10.5	11.5	7.5	8.5
20 and over 15.....	33	35	28	30.5	24.5	26.5	21.5	23.5	19	21	15	16.5	15	16.5	16.5	18	11.5	12.5	8	9
25 and over 20.....	36.5	40	31.5	34.5	28.5	30	23.5	25.5	21	21	18.5	20	18.5	19.5	18.5	18	12	13	9	10
30 and over 25.....	39.5	43	34.5	37.5	31.5	34.5	25	27.5	23	24	21	22	19.5	21	19.5	18	12.5	14	9.5	10.5
35 and over 30.....	44	48.5	37.5	41.5	34.5	37.5	28	30.5	26	27.5	23	24	21	22	21	21	13	14.5	10	11
40 and over 35.....	44	48.5	37.5	41.5	34.5	37.5	28	30.5	26	27.5	23	24	21	22	21	21	13	14.5	10.5	11.5
45 and over 40.....	51.5	56.5	44	48.5	38.5	40	32	34	29	30.5	26	27.5	23	24	21	21	14	15.5	11.5	12.5
50 and over 45.....	51.5	56.5	44	48.5	38.5	40	32	34	29	30.5	26	27.5	23	24	21	21	14	15.5	11.5	12.5
55 and over 50.....	59	65	50	55	41.5	45.5	35	38	30	33	28	30.5	25	28	24	24	14.5	16	13	13
60 and over 55.....	59	65	50	55	41.5	45.5	35	38	30	33	28	30.5	25	28	24	24	14.5	16	13	13
65 and over 60.....	64.5	70	55	60	46.5	51	38.5	40	34	37.5	29	31.5	26	29	25	25	15	16.5	13.5	14
70 and over 65.....	64.5	70	55	60	46.5	51	38.5	40	34	37.5	29	31.5	26	29	25	25	15	16.5	13.5	14
75 and over 70.....	69	75	59	65	48	53	37.5	41.5	35	38.5	30	33	28	29	27	28.5	16.5	18	13	14.5
80 and over 75.....	69	75	59	65	48	53	37.5	41.5	35	38.5	30	33	28	29	27	28.5	16.5	18	13	14.5
85 and over 80.....	71.5	78.5	61.5	67.5	50	55	39	43	36.5	40	32	33	28	29	27.5	30.5	17	18.5	14	15.5
90 and over 85.....	71.5	78.5	61.5	67.5	50	55	39	43	36.5	40	32	33	28	29	27.5	30.5	17	18.5	14	15.5
95 and over 90.....	74	81.5	64	70.5	53	57	40	44	37.5	41.5	32	35	28.5	29	28	31	17.5	19.5	14.5	15
100 and over 95.....	74	81.5	64	70.5	53	57	40	44	37.5	41.5	32	35	28.5	29	28	31	17.5	19.5	14.5	15
110 and over 100.....	76.5	84	66.5	73	54	59.5	41.5	45.5	39	43	33	35	29.5	29	29	32	19	21	15	16.5
120 and over 110.....	79	87	69	76	56.5	61	42.5	47	40	44	34.5	36.5	29.5	29	29	32	19.5	21.5	15.5	17
130 and over 120.....	81.5	89.5	71.5	78.5	57.5	63.5	44	48.5	41.5	45.5	35	37.5	30.5	30	30	33	20	22	16.5	18
140 and over 130.....	84	92.5	74	81.5	59.5	65.5	45	49.5	42.5	47	36	38	31.5	31	31	34	21.5	23.5	17.5	19.5
150 and over 140.....	84	92.5	74	81.5	59.5	65.5	45	49.5	42.5	47	36	38	31.5	31	31	34	21.5	23.5	17.5	19.5
160 and over 150.....	86.5	95	76.5	84	61.5	67.5	46.5	51	44	48.5	37	39	32.5	32	32	35	22.5	24.5	18	20
170 and over 160.....	86.5	95	76.5	84	61.5	67.5	46.5	51	44	48.5	37	39	32.5	32	32	35	22.5	24.5	18	20
180 and over 170.....	89	98	79	87	63	69.5	47.5	52.5	45	49.5	38	40	34	34	34	36	23	25	19	21
190 and over 180.....	89	98	79	87	63	69.5	47.5	52.5	45	49.5	38	40	34	34	34	36	23	25	19.5	21.5
200 and over 190.....	91.5	100.5	81.5	89.5	66.5	73	49	54	46.5	51	38.5	40	34	34	34	36	24	26	20	22
210 and over 200.....	91.5	100.5	81.5	89.5	66.5	73	49	54	46.5	51	38.5	40	34	34	34	36	24	26	20.5	22.5

88 F. C. C.

APPENDIX 6.
CLASSES.
[K—Alabama Great Southern Railroad and Southern Railway. Y—Mobile & Ohio Railroad.]

Miles.	1		2		3		4		5		6		A		B		C		D	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	25	27.5	21.5	23.5	19	21	16	17.5	13	14.5	11	12	9	10	10	11	8	9	6.5	7.5
10 and over 5.....	25	27.5	21.5	23.5	19	21	16	17.5	13	14.5	11	12	9	10	10	11	8	9	6.5	7.5
15 and over 10.....	29	32	25	27.5	21.5	23.5	17.5	19.5	15	16.5	12	13	12.5	14	14	15.5	10.5	10.5	7.5	8.5
20 and over 15.....	33	35	28	30.5	24.5	26.5	21.5	23.5	19	21	15	16.5	15	16.5	16.5	18	11.5	11.5	8	9
25 and over 20.....	37.5	40	31.5	34.5	28.5	30.5	24.5	26.5	21.5	23.5	18	19.5	17.5	18.5	18.5	21	13	12	9.5	10.5
30 and over 25.....	41.5	44	35.5	38.5	31.5	33.5	27.5	29.5	24.5	26.5	20	21.5	20	21.5	21.5	23.5	14.5	14.5	10.5	11.5
35 and over 30.....	45.5	48	39.5	41.5	35.5	37.5	30.5	32.5	26.5	28.5	21.5	23.5	22	23	23.5	25.5	15.5	15.5	11.5	12.5
40 and over 35.....	49.5	51.5	43.5	45.5	39.5	41.5	34.5	36.5	29.5	31.5	23.5	25.5	25	26	26.5	28.5	16.5	16.5	12.5	13.5
45 and over 40.....	53.5	55.5	47.5	49.5	43.5	45.5	38.5	40.5	33.5	35.5	25.5	27.5	27	28	28.5	30.5	17.5	17.5	13.5	14.5
50 and over 45.....	57.5	59.5	51.5	53.5	47.5	49.5	42.5	44.5	37.5	39.5	27.5	29.5	29	30	30.5	32.5	18.5	18.5	14.5	15.5
55 and over 50.....	61.5	63.5	55.5	57.5	51.5	53.5	46.5	48.5	41.5	43.5	29.5	31.5	31	32	32.5	34.5	19.5	19.5	15.5	16.5
60 and over 55.....	65.5	67.5	59.5	61.5	55.5	57.5	50.5	52.5	45.5	47.5	31.5	33.5	33	34	34.5	36.5	20.5	20.5	16.5	17.5
65 and over 60.....	69.5	71.5	63.5	65.5	59.5	61.5	54.5	56.5	49.5	51.5	33.5	35.5	35	36	36.5	38.5	21.5	21.5	17.5	18.5
70 and over 65.....	73.5	75.5	67.5	69.5	63.5	65.5	58.5	60.5	53.5	55.5	35.5	37.5	37	38	38.5	40.5	22.5	22.5	18.5	19.5
75 and over 70.....	77.5	79.5	71.5	73.5	67.5	69.5	62.5	64.5	57.5	59.5	37.5	39.5	39	40	40.5	42.5	23.5	23.5	19.5	20.5
80 and over 75.....	81.5	83.5	75.5	77.5	71.5	73.5	66.5	68.5	61.5	63.5	39.5	41.5	41	42	42.5	44.5	24.5	24.5	20.5	21.5
85 and over 80.....	85.5	87.5	79.5	81.5	75.5	77.5	70.5	72.5	65.5	67.5	41.5	43.5	43	44	44.5	46.5	25.5	25.5	21.5	22.5
90 and over 85.....	89.5	91.5	83.5	85.5	79.5	81.5	74.5	76.5	69.5	71.5	43.5	45.5	45	46	46.5	48.5	26.5	26.5	22.5	23.5
95 and over 90.....	93.5	95.5	87.5	89.5	83.5	85.5	78.5	80.5	73.5	75.5	45.5	47.5	47	48	48.5	50.5	27.5	27.5	23.5	24.5
100 and over 95.....	97.5	99.5	91.5	93.5	87.5	89.5	82.5	84.5	77.5	79.5	47.5	49.5	49	50	50.5	52.5	28.5	28.5	24.5	25.5
110 and over 100.....	101.5	103.5	95.5	97.5	91.5	93.5	86.5	88.5	81.5	83.5	49.5	51.5	51	52	52.5	54.5	29.5	29.5	25.5	26.5
120 and over 110.....	105.5	107.5	99.5	101.5	95.5	97.5	90.5	92.5	85.5	87.5	51.5	53.5	53	54	54.5	56.5	30.5	30.5	26.5	27.5
130 and over 120.....	109.5	111.5	103.5	105.5	99.5	101.5	94.5	96.5	89.5	91.5	53.5	55.5	55	56	56.5	58.5	31.5	31.5	27.5	28.5
140 and over 130.....	113.5	115.5	107.5	109.5	103.5	105.5	98.5	100.5	93.5	95.5	55.5	57.5	57	58	58.5	60.5	32.5	32.5	28.5	29.5
150 and over 140.....	117.5	119.5	111.5	113.5	107.5	109.5	102.5	104.5	97.5	99.5	57.5	59.5	59	60	60.5	62.5	33.5	33.5	29.5	30.5
160 and over 150.....	121.5	123.5	115.5	117.5	111.5	113.5	106.5	108.5	101.5	103.5	59.5	61.5	61	62	62.5	64.5	34.5	34.5	30.5	31.5
170 and over 160.....	125.5	127.5	119.5	121.5	115.5	117.5	110.5	112.5	105.5	107.5	61.5	63.5	63	64	64.5	66.5	35.5	35.5	31.5	32.5
180 and over 170.....	129.5	131.5	123.5	125.5	119.5	121.5	114.5	116.5	109.5	111.5	63.5	65.5	65	66	66.5	68.5	36.5	36.5	32.5	33.5
190 and over 180.....	133.5	135.5	127.5	129.5	123.5	125.5	118.5	120.5	113.5	115.5	65.5	67.5	67	68	68.5	70.5	37.5	37.5	33.5	34.5
200 and over 190.....	137.5	139.5	131.5	133.5	127.5	129.5	122.5	124.5	117.5	119.5	67.5	69.5	69	70	70.5	72.5	38.5	38.5	34.5	35.5
210 and over 200.....	141.5	143.5	135.5	137.5	131.5	133.5	126.5	128.5	121.5	123.5	69.5	71.5	71	72	72.5	74.5	39.5	39.5	35.5	36.5
220 and over 210.....	145.5	147.5	139.5	141.5	135.5	137.5	130.5	132.5	125.5	127.5	71.5	73.5	73	74	74.5	76.5	40.5	40.5	36.5	37.5
230 and over 220.....	149.5	151.5	143.5	145.5	139.5	141.5	134.5	136.5	129.5	131.5	73.5	75.5	75	76	76.5	78.5	41.5	41.5	37.5	38.5
240 and over 230.....	153.5	155.5	147.5	149.5	143.5	145.5	138.5	140.5	133.5	135.5	75.5	77.5	77	78	78.5	80.5	42.5	42.5	38.5	39.5
250 and over 240.....	157.5	159.5	151.5	153.5	147.5	149.5	142.5	144.5	137.5	139.5	77.5	79.5	79	80	80.5	82.5	43.5	43.5	39.5	40.5
260 and over 250.....	161.5	163.5	155.5	157.5	151.5	153.5	146.5	148.5	141.5	143.5	79.5	81.5	81	82	82.5	84.5	44.5	44.5	40.5	41.5
270 and over 260.....	165.5	167.5	159.5	161.5	155.5	157.5	150.5	152.5	145.5	147.5	81.5	83.5	83	84	84.5	86.5	45.5	45.5	41.5	42.5
280 and over 270.....	169.5	171.5	163.5	165.5	159.5	161.5	154.5	156.5	149.5	151.5	83.5	85.5	85	86	86.5	88.5	46.5	46.5	42.5	43.5
290 and over 280.....	173.5	175.5	167.5	169.5	163.5	165.5	158.5	160.5	153.5	155.5	85.5	87.5	87	88	88.5	90.5	47.5	47.5	43.5	44.5
300 and over 290.....	177.5	179.5	171.5	173.5	167.5	169.5	162.5	164.5	157.5	159.5	87.5	89.5	89	90	90.5	92.5	48.5	48.5	44.5	45.5
310 and over 300.....	181.5	183.5	175.5	177.5	171.5	173.5	166.5	168.5	161.5	163.5	89.5	91.5	91	92	92.5	94.5	49.5	49.5	45.5	46.5
320 and over 310.....	185.5	187.5	179.5	181.5	175.5	177.5	170.5	172.5	165.5	167.5	91.5	93.5	93	94	94.5	96.5	50.5	50.5	46.5	47.5
330 and over 320.....	189.5	191.5	183.5	185.5	179.5	181.5	174.5	176.5	169.5	171.5	93.5	95.5	95	96	96.5	98.5	51.5	51.5	47.5	48.5
340 and over 330.....	193.5	195.5	187.5	189.5	183.5	185.5	178.5	180.5	173.5	175.5	95.5	97.5	97	98	98.5	100.5	52.5	52.5	48.5	49.5
350 and over 340.....	197.5	199.5	191.5	193.5	187.5	189.5	182.5	184.5	177.5	179.5	97.5	99.5	99	100	100.5	102.5	53.5	53.5	49.5	50.5
360 and over 350.....	201.5	203.5	195.5	197.5	191.5	193.5	186.5	188.5	181.5	183.5	99.5	101.5	101	102	102.5	104.5	54.5	54.5	50.5	51.5
370 and over 360.....	205.5	207.5	199.5	201.5	195.5	197.5	190.5	192.5	185.5	187.5	101.5	103.5	103	104	104.5	106.5	55.5	55.5	51.5	52.5
380 and over 370.....	209.5	211.5	203.5	205.5	199.5	201.5	194.5	196.5	189.5	191.5	103.5	105.5	105	106	106.5	108.5	56.5	56.5	52.5	53.5
390 and over 380.....	213.5	215.5	207.5	209.5	203.5	205.5	198.5	200.5	193.5	195.5	105.5	107.5	107	108	108.5	110.5	57.5	57.5	53.5	54.5
400 and over 390.....	217.5	219.5	211.5	213.5	207.5	209.5	202.5	204.5	197.5	199.5	107.5	109.5	109	110	110.5	112.5	58.5	58.5	54.5	55.5
410 and over 400.....	221.5	223.5	215.5	217.5	211.5	213.5	206.5	208.5	201.5	203.5	109.5	111.5	111	112	112.5	114.5	59.5	59.5	55.5	56.5
420 and over 410.....	225.5	227.5	219.5	221.5	215.5	217.5	210.5	212.5	205.5	207.5	111.5	113.5	113	114	114.5	116.5	60.5	60.5	56.5	57.5
430 and over 420.....	229.5	231.5	223.5	225.5	219.5	221.5	214.5	216.5	209.5	211.5	113.5	115.5	115	116	116.5	118.5	61.5	61.5	57.5	58.5
440 and over 430.....	233.5	235.5	227.5	229.5	223.5	225.5	218.5	220.5	213.5	215.5	115.5	117.5	117	118	118.5	120.5	62.5	62.5	58.5	59.5
450 and over 440.....	237.5	239.5	231.5	233.5	227.5	229.5	222.5	224.5	217.5	219.5	117.5	119.5	119	120	120.5	122.5	63.5	63.5	59.5	60.5
460 and over 450.....	241.5	243.5	235.5	237.5	231.5	233.5	226.5	228.5	221.5	223.5	119.5	121.5	121	122	122.5	124.5	64.5	64.5	60.5	61.5
470 and over 460.....	245.5	2																		

APPENDIX 8—Continued.
COMMODITY GROUPS.

Miles.	1		2		3		4		5		6A		6B		6		7		8	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	100	110	10	11	6	6.5	10	11	2	2.5	3.5	4	2.5	3	0.5	7	7.5	8.5	4.5	5
10 and over 5.....	130	133	12	13	7	7.5	12	13	2	2.5	3	4	2.5	3.5	7.5	9	10	5	5.5	6
15 and over 10.....	140	143	15	16	8	8.5	15	16	3	3.5	4	4.5	3	3.5	8.5	10	11	6	6.5	7
20 and over 15.....	150	155	16	17	9	9.5	16	17	3	3.5	4	4.5	3	3.5	9	11	12	6	6.5	7
25 and over 20.....	160	165	18	19	10	10.5	18	19	3	3.5	4	4.5	3	3.5	10.5	12	13	7	7.5	8
30 and over 25.....	170	175	19	20	10	10.5	19	20	3	3.5	4	4.5	3	3.5	11	13	14	7	7.5	8
35 and over 30.....	180	185	20	21	11	11.5	20	21	3	3.5	4	4.5	3	3.5	11.5	14	15	7.5	8	8.5
40 and over 35.....	190	195	21	22	11	11.5	21	22	4	4.5	5	5.5	4	4.5	12	15	16	8	8.5	9
45 and over 40.....	195	200	22	23	11	11.5	22	23	4	4.5	5	5.5	4	4.5	12.5	16	17	8	8.5	9
50 and over 45.....	200	205	23	24	11.5	12	23	24	4	4.5	5	5.5	4	4.5	13	17	18	8	8.5	9
55 and over 50.....	190	200	23	24	11.5	12	23	24	4	4.5	5	5.5	4	4.5	12.5	16	17	8	8.5	9
60 and over 55.....	195	205	24	25	12	12.5	24	25	4.5	5	5.5	6	4.5	5	13	17	18	8	8.5	9
65 and over 60.....	200	210	25	26	12	12.5	25	26	4.5	5	5.5	6	4.5	5	13.5	18	19	9	9.5	10
70 and over 65.....	205	215	26	27	12.5	13	26	27	4.5	5	5.5	6	4.5	5	14	19	20	9	9.5	10
75 and over 70.....	205	215	26	27	12.5	13	26	27	4.5	5	5.5	6	4.5	5	14	19	20	9	9.5	10
80 and over 75.....	210	220	26	27	12.5	13	26	27	4.5	5	5.5	6	4.5	5	14	19	20	9	9.5	10
85 and over 80.....	210	220	26	27	12.5	13	26	27	4.5	5	5.5	6	4.5	5	14	19	20	9	9.5	10
90 and over 85.....	215	225	27	28	13	13.5	27	28	5	5.5	6	6.5	5	5.5	14.5	20	21	10	10.5	11
95 and over 90.....	215	225	27	28	13	13.5	27	28	5	5.5	6	6.5	5	5.5	14.5	20	21	10	10.5	11
100 and over 95.....	215	225	27	28	13	13.5	27	28	5	5.5	6	6.5	5	5.5	14.5	20	21	10	10.5	11
110 and over 100.....	220	230	28	29	13.5	14	28	29	5.5	6	6.5	7	5.5	6	15	21	22	10.5	11	11.5
120 and over 110.....	230	240	29	30	14	14.5	29	30	6	6.5	7	7.5	6	6.5	15.5	22	23	11	11.5	12
130 and over 120.....	235	245	30	31	14.5	15	30	31	6	6.5	7	7.5	6	6.5	16	23	24	11	11.5	12
140 and over 130.....	240	250	31	32	15	15.5	31	32	6.5	7	7.5	8	6.5	7	16.5	24	25	11.5	12	12.5
150 and over 140.....	245	255	31	32	15	15.5	31	32	6.5	7	7.5	8	6.5	7	16.5	24	25	11.5	12	12.5
160 and over 150.....	250	260	32	33	15.5	16	32	33	7	7.5	8	8.5	7	7.5	17	25	26	12	12.5	13
170 and over 160.....	255	265	33	34	16	16.5	33	34	7	7.5	8	8.5	7	7.5	17.5	26	27	12.5	13	13.5
180 and over 170.....	260	270	34	35	16.5	17	34	35	7.5	8	8.5	9	7.5	8	18	27	28	13	13.5	14
190 and over 180.....	265	275	34	35	16.5	17	34	35	7.5	8	8.5	9	7.5	8	18	27	28	13	13.5	14
200 and over 190.....	270	280	35	36	17	17.5	35	36	8	8.5	9	9.5	8	8.5	18.5	28	29	13.5	14	14.5
210 and over 200.....	275	285	35	36	17	17.5	35	36	8	8.5	9	9.5	8	8.5	18.5	28	29	13.5	14	14.5
220 and over 210.....	280	290	36	37	17.5	18	36	37	8.5	9	9.5	10	8.5	9	19	29	30	14	14.5	15
230 and over 220.....	285	295	36	37	17.5	18	36	37	8.5	9	9.5	10	8.5	9	19	29	30	14	14.5	15
240 and over 230.....	290	300	37	38	18	18.5	37	38	9	9.5	10	10.5	9	9.5	20	30	31	14.5	15	15.5
250 and over 240.....	295	305	37	38	18	18.5	37	38	9	9.5	10	10.5	9	9.5	20	30	31	14.5	15	15.5
260 and over 250.....	300	310	38	39	18.5	19	38	39	9.5	10	10.5	11	9.5	10	20.5	31	32	15	15.5	16
270 and over 260.....	305	315	38	39	18.5	19	38	39	9.5	10	10.5	11	9.5	10	20.5	31	32	15	15.5	16
280 and over 270.....	310	320	39	40	19	19.5	39	40	10	10.5	11	11.5	10	10.5	21	32	33	15.5	16	16.5
290 and over 280.....	315	325	39	40	19	19.5	39	40	10	10.5	11	11.5	10	10.5	21	32	33	15.5	16	16.5
300 and over 290.....	320	330	40	41	19.5	20	40	41	10.5	11	11.5	12	10.5	11	21.5	33	34	16	16.5	17

APPENDIX C—Continued.

COMMODITY GROUPS.

Miles.	9		10		11		12		12A		13		14		15		16		17	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under	7.5	8.5																		
10 and over 5	9	10	4	4.5	2.5	3	4.5	2.5	3	3.5	5	5.5	12	13	9	10	10	11	6	6.5
15 and over 10	10	11	5	5.5	3	3.5	5	5.5	3	3.5	6	6.5	15	16.5	11	12	12	13	7	7.5
20 and over 15	11	12	6	6.5	4	4.5	5	5.5	4	4.5	7	7.5	17	18.5	13	14	14	15	8	8.5
25 and over 20	12	13	6	6.5	4	4.5	5	5.5	4	4.5	8	9	21	23	15	16.5	16	17.5	8	9
30 and over 25	13	14.5	6.5	7	4.5	5	5.5	6	6.5	5	5.5	10.5	25.5	16	17.5	17	21	8	8.5	
35 and over 30	14	15.5	6.5	7.5	5	5.5	6	6.5	5	5.5	10	11	27	28.5	18	20	22	24	8.5	9
40 and over 35	15	16.5	7	7.5	5.5	6	6.5	6	6.5	5.5	10.5	11.5	28.5	30.5	19	21	23	25	9	9.5
45 and over 40	16	17.5	7	7.5	6	6.5	6	6.5	6	6.5	11	12	30.5	32	20	22	24	26.5	9	10
50 and over 45	17	18.5	7.5	8.5	6.5	7	7.5	6.5	6.5	6.5	11.5	12.5	32	33	20	22	24	26.5	9	10
55 and over 50	18	20	7.5	8.5	6	6.5	6.5	7	6.5	6	11.5	12.5	33.5	35	21	23	25	27.5	9.5	10.5
60 and over 55	19	21	8	9	6	6.5	6.5	7.5	6.5	6	12	13	35	37	22	24	26	28.5	9.5	10.5
65 and over 60	20	21.5	8	9	6	6.5	6.5	7.5	6.5	6	12	13	37	38.5	22	24	27	29.5	10	11
70 and over 65	20.5	22.5	8.5	9.5	6.5	7	7.5	7.5	6.5	6	12.5	14	38.5	40	23	25	28	31	10	11
75 and over 70																				
80 and over 75	21	23	9	10	6.5	7	7.5	7.5	6.5	6	13	14.5	40	42	23	25	29	32	10.5	11.5
85 and over 80	21.5	23.5	9	10	6.5	7	7.5	7.5	6.5	6	13	14.5	42	43	23	25	30	33	10.5	11.5
90 and over 85	22	24	9.5	10.5	7	7.5	7.5	7.5	6.5	6	13	14.5	43	44	24	26	31	34	11	12
95 and over 90	22.5	24.5	9.5	10.5	7	7.5	7.5	7.5	6.5	6	13.5	15	44	45	24	26	32	35	11	12
100 and over 95	23	25	10	11	7.5	8.5	8	8.5	7.5	6.5	14	15.5	45	46	25	27	33	36.5	11.5	12.5
110 and over 100	24	26.5	10.5	11.5	8	9	8	9	7.5	6.5	14.5	16	46	47	25	27	34	37.5	12	13
120 and over 110	25	27.5	11	12	8.5	9.5	8.5	9.5	8	6.5	15	16.5	47	48.5	26	28	35	38.5	12	13
130 and over 120	25.5	28.5	11.5	12.5	9	10	8.5	9.5	8	6.5	15.5	17	48	49.5	26	28	36	39.5	12.5	13.5
140 and over 130	26	29	11.5	12.5	9	10	9	10	9	6.5	16	17.5	49	50.5	27	29	37	40.5	13	14
150 and over 140	26.5	29.5	11.5	12.5	9.5	10.5	9	10	10	6.5	16	17.5	50	51	27	29	38	41	13	14
160 and over 150	27	30.5	12	13	9.5	10.5	9.5	10.5	10.5	6.5	16.5	18	51	52	28	30	39	42	13	14
170 and over 160	27.5	30.5	12	13	9.5	10.5	9.5	10.5	10.5	6.5	16.5	18	52	53	28	30	40	43	13	14
180 and over 170	28	31	12.5	14	10	11	10	11	10	6.5	17	18.5	53	54	29	31	41	44	14	15
190 and over 180	28.5	31.5	12.5	14	10	11	10	11	10	6.5	17	18.5	54	55	29	31	42	45	14	15
200 and over 190	29	32	13	14.5	10	11	10.5	11.5	10.5	6.5	17.5	19.5	55	56	30	32	43	46	14	15

APPENDIX 6—Continued.

COMMODITY GROUPS.

Miles.	26		27		27A		28		29		30		31		32		33		34	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	5	5.5	2.5	3	3	3.5	3	3.5	90	100	1,000	1,100	9	10	3	2.5	80	88	5	8.5
10 and over 5.....	6.5	7.5	2.5	3	3	3.5	3	3.5	90	100	1,100	1,210	11	12	4	4.5	90	99	7	7.5
15 and over 10.....	7.5	8.5	3	3.5	3.5	4	4	4.5	100	110	1,200	1,320	12	13	5	5.5	100	110	7.5	8.5
20 and over 15.....	8.5	9	3	3.5	3.5	4	4.5	5	120	130	1,300	1,430	13	14.5	5	6	105	115.5	8	9
25 and over 20.....	9	10	3	3.5	3.5	4	4.5	5	130	150	1,500	1,640	14	15.5	6	6.5	110	121	8	9
30 and over 25.....	9.5	10.5	4	4.5	4	4.5	4.5	5	140	160	1,600	1,750	15	16.5	6	6.5	115	126.5	8.5	9.5
35 and over 30.....	10	11	4	4.5	4	4.5	5	5.5	150	170	1,700	1,860	16	17.5	6.5	7	120	132	9	10
40 and over 35.....	10.5	11.5	4	4.5	4	4.5	5	5.5	160	180	1,800	1,970	17	18.5	7	7.5	125	137.5	9.5	10.5
45 and over 40.....	11	12	4.5	5	4.5	5	5.5	6	170	190	1,900	2,080	17.5	19.5	7	7.5	130	143	10	11
50 and over 45.....	11.5	12.5	4.5	5	4.5	5	5.5	6	180	200	1,700	1,870	18	19.5	7	7.5	135	148.5	10.5	11.5
55 and over 50.....	12	13	4.5	5	4.5	5	5.5	6	170	190	1,750	1,925	18.5	20.5	7.5	8	140	154	11	12
60 and over 55.....	12.5	13.5	5	5.5	5	5.5	6	6.5	180	200	1,800	1,980	19	21	7.5	8.5	145	159.5	11.5	12.5
65 and over 60.....	13	14	5	5.5	5	5.5	6	6.5	190	210	1,900	2,085	19.5	21.5	8	9	150	165	12	13
70 and over 65.....	13.5	14.5	5.5	6	5	5.5	6	6.5	200	220	1,900	2,090	20	22	8	9	155	170.5	12.5	13.5
75 and over 70.....	14	15	5.5	6	5.5	6	7	7.5	210	230	1,950	2,145	20	22.5	8.5	9.5	160	175	13	14.5
80 and over 75.....	14.5	15	5.5	6	5.5	6	7	7.5	220	240	2,000	2,200	20.5	23	8.5	9.5	165	180.5	13.5	14.5
85 and over 80.....	15	15.5	6	6.5	6	6.5	7	7.5	230	250	2,050	2,255	21	23.5	9	10	170	185	14	15
90 and over 85.....	15.5	16	6	6.5	6	6.5	7.5	8	240	260	2,100	2,310	21.5	24	9	10	175	190.5	14.5	15.5
95 and over 90.....	16	16.5	6	6.5	6	6.5	8	8.5	250	270	2,150	2,365	22	25	9.5	10.5	180	195.5	15	16
100 and over 95.....	16.5	17	6	6.5	6	6.5	8	8.5	260	280	2,200	2,420	22.5	25.5	9.5	10.5	185	200.5	15.5	16.5
105 and over 100.....	17	17.5	7	7.5	6.5	7	8.5	9	270	290	2,250	2,475	23	26.5	10.5	11.5	190	205.5	16	17
110 and over 105.....	17.5	18	7	7.5	6.5	7	8.5	9	280	300	2,300	2,530	23.5	27	10.5	11.5	195	210.5	16.5	17.5
115 and over 110.....	18	18.5	7	7.5	6.5	7	9	9.5	290	310	2,350	2,595	24	27.5	11	12	200	215.5	17	18
120 and over 115.....	18.5	19	7.5	8.5	7	7.5	9	10	300	320	2,400	2,660	24.5	28.5	11	12.5	205	220.5	17.5	18.5
125 and over 120.....	19	19.5	7.5	8.5	7	7.5	9.5	10.5	310	330	2,450	2,725	25	29	11.5	12.5	210	225.5	18	19
130 and over 125.....	19.5	20	8	8.5	7	7.5	9.5	10.5	320	340	2,500	2,790	25.5	29.5	11.5	12.5	215	230.5	18.5	19.5
135 and over 130.....	20	20.5	8	8.5	7	7.5	9.5	10.5	330	350	2,550	2,860	26	30	11.5	12.5	220	235.5	19	20
140 and over 135.....	20.5	21	8	8.5	7	7.5	9.5	10.5	340	360	2,600	2,930	26.5	30.5	11.5	12.5	225	240.5	19.5	20.5
145 and over 140.....	21	21.5	8	8.5	7	7.5	9.5	10.5	350	370	2,650	3,000	27	31	11.5	12.5	230	245.5	20	21
150 and over 145.....	21.5	22	8	8.5	7	7.5	9.5	10.5	360	380	2,700	3,070	27.5	31.5	11.5	12.5	235	250.5	20.5	21.5
155 and over 150.....	22	22.5	8	8.5	7	7.5	9.5	10.5	370	390	2,750	3,140	28	32	11.5	12.5	240	255.5	21	22
160 and over 155.....	22.5	23	8	8.5	7	7.5	9.5	10.5	380	400	2,800	3,210	28.5	32.5	11.5	12.5	245	260.5	21.5	22.5
165 and over 160.....	23	23.5	8	8.5	7	7.5	9.5	10.5	390	410	2,850	3,280	29	33	11.5	12.5	250	265.5	22	23
170 and over 165.....	23.5	24	8	8.5	7	7.5	9.5	10.5	400	420	2,900	3,350	29.5	33.5	11.5	12.5	255	270.5	22.5	23.5
175 and over 170.....	24	24.5	8	8.5	7	7.5	9.5	10.5	410	430	2,950	3,420	30	34	11.5	12.5	260	275.5	23	24
180 and over 175.....	24.5	25	8	8.5	7	7.5	9.5	10.5	420	440	3,000	3,490	30.5	34.5	11.5	12.5	265	280.5	23.5	24.5
185 and over 180.....	25	25.5	8	8.5	7	7.5	9.5	10.5	430	450	3,050	3,560	31	35	11.5	12.5	270	285.5	24	25
190 and over 185.....	25.5	26	8	8.5	7	7.5	9.5	10.5	440	460	3,100	3,630	31.5	35.5	11.5	12.5	275	290.5	24.5	25.5

APPENDIX 6—Continued.
COMMODITY GROUPS.

Miles.	35		36		37		38		39		40		41		42		43		44	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
1 and under	60	66	125	137.5	6	6.5	6.5	7	10	11	11	12	50	55.5	7	7.5	10	11	5	5.5
10 and over 10	70	77	145	145.5	8	9	7.5	8.5	12	13	13	14.5	60	60.5	9	9	12	13	6	6.5
20 and over 20	80	86	165	165.5	9	10	8	9	14	15.5	15	16.5	65	65.5	10	10	14	15	6.5	7
30 and over 30	90	96	185	181.5	10	11	9	9.5	15	17	17	18.5	65	71.5	11	12	15	16.5	7.5	8.5
40 and over 40	100	110	205	193.5	11.5	12.5	9.5	10.5	20	20	19	21	75	82.5	12	13	17	18.5	8	9
50 and over 50	110	121	225	211.5	12.5	13	10.5	11.5	21	22	20	22	75	82.5	13	14.5	18	20	8	9
60 and over 60	120	131	245	223.5	13	14.5	11.5	12.5	22	23	21	23	80	88	14	15.5	19	21	9	10
70 and over 70	130	142	265	235.5	13.5	15	11.5	12.5	23	24	22	25	85	93.5	15	17.5	20	23	9	10
80 and over 80	140	154	285	247.5	14	15.5	12.5	13	24.5	25	23	26.5	85	93.5	16.5	18.5	21.5	25	9.5	10.5
90 and over 90	150	166	305	259.5	14.5	16.5	12.5	13.5	25	26.5	24	27.5	90	98	17.5	19.5	22.5	26	10	10.5
100 and over 100	160	178	325	271.5	15	17.5	13	14.5	26.5	27	25	28.5	95	104.5	18.5	20.5	23.5	26.5	10	11
110 and over 110	170	190	345	283.5	15.5	18.5	13.5	14.5	27.5	28.5	26	29.5	100	110	19	21	24	28.5	10.5	11.5
120 and over 120	180	202	365	295.5	16	19.5	14	15.5	28.5	29.5	27	30.5	105	115.5	20	22.5	25	29.5	10.5	11.5
130 and over 130	190	214	385	307.5	16.5	20.5	14.5	16	29.5	30.5	28	31.5	110	121	21	23	26	30.5	10.5	11.5
140 and over 140	200	226	405	319.5	17	21.5	15	16.5	30.5	31.5	29	32.5	115	126.5	22	24	27	31.5	11.5	12.5
150 and over 150	210	238	425	331.5	17.5	22.5	15.5	17	31.5	32.5	30	33.5	120	132	23	25	28	32.5	11.5	12.5
160 and over 160	220	250	445	343.5	18	23.5	16	17.5	32.5	33.5	31	34.5	125	137.5	24	26.5	29	33.5	12	13
170 and over 170	230	262	465	355.5	18.5	24.5	16.5	18	33.5	34.5	32	35.5	130	143	25	27.5	30.5	34.5	12.5	13.5
180 and over 180	240	274	485	367.5	19	25.5	17	18.5	34.5	35.5	33	36.5	135	148.5	26	28.5	31.5	35.5	13	14.5
190 and over 190	250	286	505	379.5	19.5	26.5	17.5	19.5	35.5	36.5	34	37.5	140	154	27	29.5	32.5	36.5	13.5	14.5
200 and over 200	260	298	525	391.5	20	27.5	18	20.5	36.5	37.5	35	38.5	145	159.5	28	30.5	33.5	37.5	14	15

APPENDIX 6—Continued.
COMMODITY GROUPS.

Miles.	45		46		47		48		49		50		51		52	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	7	7.5	10	11	7	7.5	4	4.5	4	4.5	5	5.5	5	5.5	9	10
10 and over 5.....	8	9	11.5	12.5	8	9	4.5	5.5	5	6	6	6.5	6	6.5	10	11
15 and over 10.....	9	10	13	14.5	9	10	5	5.5	5.5	6	6.5	7	7	7.5	11	12
20 and over 15.....	10	11	14.5	16	10	11	5.5	6.5	6	6.5	7	7.5	7.5	8.5	12	13
25 and over 20.....	11	12	16	17.5	11	12	6	7	6.5	7	7.5	8.5	8	9	13	14.5
30 and over 25.....	11.5	12.5	17	18.5	12	13	6.5	7.5	7	7.5	8	9	8.5	9.5	13.5	15
35 and over 30.....	12	13	18	20	12.5	14	6	6.5	7.5	8.5	9	9.5	9	10	14	15.5
40 and over 35.....	12.5	14	19	21	13	14.5	6.5	7	8	9	9.5	10	9.5	10.5	14.5	16
45 and over 40.....	13	14.5	20	22	13.5	15	6.5	7	8.5	9.5	10	10.5	10	11	15	16.5
50 and over 45.....	13.5	15	21	23	14	15.5	6.5	7	9	10	10.5	11	10.5	11.5	15.5	17
55 and over 50.....	14	15.5	22	24	14.5	16	7	7.5	9.5	10.5	10.5	11	11	12	16	17.5
60 and over 55.....	14.5	16	23	25.5	15	16.5	7	7.5	10	11	10.5	11.5	11	12	16.5	18
65 and over 60.....	15	16.5	24	26.5	15.5	17	7.5	8.5	10.5	11.5	10.5	11.5	11.5	12.5	17	18.5
70 and over 65.....	15.5	17	25	27.5	16	17.5	8	8.5	11	12	11	12	12	13	17.5	19.5
75 and over 70.....	16	17.5	25.5	28	16.5	18	8	9	11.5	12.5	11	12	12	13	18	20
80 and over 75.....	16.5	18	26	28.5	17	18.5	8	9	12	13	11.5	12.5	12	13	18.5	20.5
85 and over 80.....	17	18.5	26.5	29	17.5	19.5	8.5	9.5	12	13	11.5	12.5	12.5	14	19	21
90 and over 85.....	17.5	19.5	27	29.5	18	20	8.5	9.5	12.5	14	12	13	12.5	14	19.5	21.5
95 and over 90.....	18	20	27.5	30.5	18.5	20.5	9	10	13	14.5	12.5	13	13	14.5	20	22
100 and over 95.....	18.5	20.5	28	31	19	21	9	10	13	14.5	12.5	14	13	14.5	20.5	22.5
110 and over 100.....	20	22	29	32	19.5	21.5	9.5	10.5	13.5	15	13	14.5	13.5	15	22	24
120 and over 110.....	21	23	30	33	20	22	9.5	10.5	14	15.5	13.5	15	13.5	15	22	24.5
130 and over 120.....	22	24	31	34	20.5	22.5	10	11	14.5	16	14	15.5	14	15.5	23	25.5
140 and over 130.....	23	25.5	32	35	21	23	10	11	15	16.5	14.5	16	14	15.5	23	25.5
150 and over 140.....	24	26.5	33	36.5	21.5	23.5	10.5	11.5	15.5	17	15	16.5	14.5	16	23	25.5
160 and over 150.....	25	27.5	33.5	37.5	21.5	23.5	10.5	11.5	16	17.5	15.5	17	14.5	16	27	29.5
170 and over 160.....	25.5	28.5	34	38	22	24	11	12	16.5	18	15.5	17.5	15	16.5	27	29.5
180 and over 170.....	26	29	34.5	38.5	22.5	24.5	11.5	12.5	17	18.5	16	17.5	15.5	17	28	30
190 and over 180.....	26.5	29.5	35	39	22.5	24.5	11.5	12.5	17	18.5	16	17.5	15.5	17	28	30
200 and over 190.....	27	29.5	35.5	39	22.5	24.5	11.5	12.5	17	18.5	16	17.5	15.5	17	28	30

APPENDIX 6—Continued.
COMMODITY GROUPS.

Miles.	53		54		55		56		57		58		59	
	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y	X	Y
5 and under.....	6	6.5	12	13	18	20	12	13	10	11	10	11	68	69.5
10 and over 5.....	7	7.5	14	15.5	20	22	14	15.5	11.5	12.5	11.5	12.5	70	72.5
15 and over 10.....	8	9	15	16.5	22	24	15	16.5	13	14.5	13	14.5	72	75
20 and over 15.....	9	10	16	17.5	24	26.5	16	17.5	14	15.5	14	15.5	73	76.5
25 and over 20.....	10	11	17	18.5	26	28.5	17	18.5	15	16.5	15	16.5	74	77
30 and over 25.....	10.5	11.5	18	20	28	31	18	20	16	17.5	16	17.5	101	103.5
35 and over 30.....	11	12	19	21	30	33	19	21	16.5	18	16.5	18	108	111
40 and over 35.....	11.5	12.5	20	22	32	35	20	22	17	18.5	17	18.5	115	119
45 and over 40.....	12	13	21	23	34	37.5	21	23	17.5	19.5	17.5	19.5	122	126.5
50 and over 45.....	12.5	14	22	24	36	39.5	22	24	18	20	18	20	129	134
55 and over 50.....	13	14.5	23	25.5	37.5	41.5	23	25.5	18.5	20.5	18.5	20.5	136	140.5
60 and over 55.....	13.5	15	24	26.5	39	43	24	26.5	19	21	19	21	142	146
65 and over 60.....	14	15.5	25	27.5	40.5	44.5	25	27.5	19.5	21.5	19.5	21.5	148	153
70 and over 65.....	14.5	16	26	28.5	42	46	26	28.5	20	22	20	22	154	159.5
75 and over 70.....	15	16.5	27	29.5	43.5	48	27	29.5	20.5	22.5	20.5	22.5	160	170
80 and over 75.....	15.5	17	28	31	45	49.5	28	31	20.5	22.5	21	23	165	181.5
85 and over 80.....	16	17.5	29	32	46	50.5	29	32	21	23	21.5	23.5	170	187
90 and over 85.....	16.5	18	30	33	47	51.5	30	33	21	23	22	24	175	192.5
95 and over 90.....	17	18.5	31	34	48	53	31	34	21.5	23.5	22.5	24.5	180	198
100 and over 95.....	17.5	19.5	32	35	49	54	32	35	21.5	23.5	23	25.5	185	203.5
110 and over 100.....	19	21	33	36.5	50	55	33	36.5	22	24	24	26.5	192	211
120 and over 110.....	19.5	21.5	34	37.5	51	56	34	37.5	22.5	25	24.5	27	199	219
130 and over 120.....	20	22	35	38.5	52	57	35	38.5	23	25.5	25	27.5	206	226.5
140 and over 130.....	20.5	22.5	36	39.5	53	58.5	36	39.5	23.5	26	25.5	28	213	234.5
150 and over 140.....	21	23	37	40.5	54	59.5	37	40.5	24	26.5	26	28.5	220	243
160 and over 150.....	21.5	23.5	38	42	55	60.5	38	42	24.5	27	26.5	29	226	248.5
170 and over 160.....	22	24	39	43	56	61.5	39	43	25	27.5	27	29.5	232	255
180 and over 170.....	22.5	25	40	44	57	62.5	40	44	25.5	28	27.5	30.5	238	263
190 and over 180.....	23	25.5	41	45	58	64	41	45	26	28.5	28	31	244	268.5
200 and over 190.....	23.5	26	42	46	59	65	42	46	26.5	29	28.5	31.5	250	275

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Acid, sulphuric, in iron or steel drums, or barrels, c. l., minimum weight 36,000 pounds, per ton 2,000 pounds.	Commodity group No. 1, plus 25 per cent.
Acid, sulphuric, in tank cars (see general rule 35 of consolidated classification), minimum weight capacity of tank, c. l., per ton 2,000 pounds.	Commodity group No. 1.
Agricultural implements, rated sixth class in carloads in southern classification, with or without parts thereof, mixed with wagons, farm, without springs, with or without parts thereof, minimum weight 20,000 pounds.	6.
Agricultural cultivating implements: Corn planters, cotton choppers, cotton planters, cultivators, field rollers, grain drills, fertilizer distributors, harrows, plows, potato diggers, potato planters, seed sowers (not hand), stalk cutters (field) or transplanters, straight or mixed carloads, and parts of implements named when shipped with any of the implements named, minimum weight 20,000 pounds.	Commodity group No. 2.
Agricultural implement or vehicle material, wooden: Axle beds or caps, bars, side and spring, beams, bolsters, bottoms, ends or sides, bows, brake bars, double-trees, eveners, felloes, fenders, handles, headblocks, hounds, hubs, neck yokes, poles, reaches, rims, rounds, shafts, singletrees, spokes or tongues, sawed to shape, bent or not bent, but not further finished, straight or mixed carloads, minimum weight 36,000 pounds.	Commodity group No. 3.
Axle beds or caps, bars, side and spring, beams, bolsters, bottoms, ends or sides, bows, brake bars, double-trees, eveners, felloes, fenders, handles, headblocks, hounds, hubs, neck yokes, poles, reaches, rims, rounds, shafts, singletrees, spokes or tongues, in the white, not ironed, in packages as provided for less-than-carload shipments in southern classification, l. c. l.	5.
Same, loose or in packages, straight or mixed carloads, or in mixed carloads with handles, implement without metal attachments, loose or in packages, minimum weight 30,000 pounds.	Commodity group No. 4.
Ashes or cinders, coal, in bulk or in packages, straight or mixed carloads, minimum weight 36,000 pounds.	Commodity group No. 5.
Asphalt (asphaltum), natural or by-product (not paint, stain, nor varnish), in bags or in bulk in barrels, with or without open heads, or in cakes, straight or mixed carloads, minimum weight 40,000 pounds, or in tank cars (see general rule 35 of consolidated classification), c. l.	Commodity group No. 6.
Bagging, new, rated class A in southern classification, c. l., minimum weight 30,000 pounds.	Commodity group No. 7.
Bagging, old, rated class A in southern classification, c. l., minimum weight 24,000 pounds.	Do.
Bakery goods, viz:	
Biscuits, bread, cakes, crackers, matzos, pretzels, crackers, or matzos dust or meal:	
In cartons or in fibre or metal cans, with or without glass fronts, loaded at ends of box car, securely held in place by crating or slats across car, and with or without shipments of bakery goods in packages as provided for l. c. l. shipments in southern classification:	
Straight or mixed carloads, minimum weight 24,000 pounds.	5.

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Bakery goods—Continued.	
Biscuits, bread, cakes, etc.—Continued.	
In cartons—Continued.	
Same, loaded as above described, or in packages as provided for less-than-carload shipments in southern classification, c. l., minimum 12,000 pounds.	4.
Same, in packages as provided for straight carload shipments in southern classification, straight or mixed carloads, minimum weight 20,000 pounds.	5.
Bark, tan or spent, loose or in packages, c. l., minimum weight 24,000 pounds.	Commodity group No. 8.
Baskets, or hampers, fruit or vegetable, s. u., nested, including tops, in bundles, c. l., minimum weight 15,000 pounds.	A.
Beans, and peas, dried, edible (other than soya or velvet beans or cowpeas), c. l., minimum weight 36,000 pounds.	6.
Beans, soya or velvet, ground, straight or when mixed with ground velvet bean hulls, and/or stalks or vines, in bags, any quantity.	D.
Beverages, nonalcoholic, and mineral waters:	
(a) Beverages, nonalcoholic, carbonated, flavored or phosphated (beverages such as cereal beverages, ginger ale, birch beer, root beer or sarsaparilla), not including extracts or syrups, in packages as provided for straight carload shipments in southern classification, straight or mixed carloads, minimum weight 30,000 pounds.	Commodity group No. 9.
(b) Water, mineral or plain, not flavored or phosphated, carbonated (charged), and other than carbonated, in packages as provided for straight carload shipments in southern classification, straight or mixed carloads, minimum weight 30,000 pounds.	
Will also apply on one or more of the articles specified in paragraph (a) in mixed carloads with one or more of the articles specified in paragraph (b), minimum weight 30,000 pounds.	
Blocks, asphalt paving, loose or in packages, c. l., minimum weight 40,000 pounds.	Commodity group No. 10.
Blocks, segment, sewer or culvert, earthen or concrete, c. l., minimum weight 40,000 pounds.	Commodity group No. 11.
Boxes or crates, fruit or vegetables, s. u., including wood splint or veneer boxes (inside carriers), s. u., nested, c. l., minimum weight 15,000 pounds.	A.
Brick, common and chimney (radial), straight or mixed carloads, minimum weight 50,000 pounds.	Commodity group No. 5-A.
Brick, coated, face, ornamental (not enameled or glazed, other than salt glazed), pressed, salt glazed, sand-lime, or shaped (not enameled or glazed, other than salt glazed), straight or mixed carloads, minimum weight 40,000 pounds.	Commodity group No. 12.
Brick, enameled or glazed, other than salt glazed, c. l., minimum weight 40,000 pounds.	Commodity group No. 12-A, plus 25 per cent.
Brick, fire, c. l., minimum weight 40,000 pounds.....	Commodity group No. 12.
Brick, paving, c. l., minimum weight 50,000 pounds....	Do.
60 I. C. C.	

APPENDIX 8—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
<p>Building woodwork (house trim), not further finished than primed, made of native wood, Canadian wood, or Mexican pine:</p> <p>Balusters; baseboards with moulding; bases, blinds or shutters, slatted or solid; capitals; casing, door or window; ceiling, with panels; columns solid or stave; cornices; doors, glazed with other than leaded or plate glass (see note), or not glazed; frames, door, skylight or window, k. d.; grille work; handrails; mouldings; newel posts; paneling; porch work; sash, glazed with other than bent, leaded or plate glass (see note), or not glazed; scroll work; stair work, k. d. or s. u., in sections; wainscoting and building woodwork (house trim), not further finished than primed, made of native wood, Canadian wood, or Mexican pine, n. o. i. b. n., straight or mixed carloads, minimum weight 30,000 pounds.</p> <p>NOTE.—Glazed doors or sash in bundles or crates must have glass completely covered with wooden boards not less than $\frac{3}{4}$ inch in thickness.</p> <p>Mixed carloads of two or more articles as specified under "Building woodwork (house trim), not further finished than primed, made of native wood, Canadian wood, or Mexican pine," with two or more of the following articles: Lumber, rough sawed or dressed, $\frac{3}{4}$ of an inch or over in thickness, other than cedar, cherry, mahogany, walnut, and cigar box; baseboards, without moulding; casing, other than door or window; ceiling other than panel; flooring, other than compound, parquet, and wood carpeting; frames, door, skylight or window, s. u.; laths and shingles, minimum weight 30,000 pounds.</p>	<p>Commodity group No. 4.</p> <p>Do.</p>
<p>Cane, sugar, c. l., minimum weight 20,000 pounds.</p>	<p>Commodity group No. 13.</p>
<p>Canned goods, viz:</p> <p>Fruit, canned or preserved in juice or sirup, or in liquid, other than brine, vinegar, or alcoholic liquor, fruit butter, crushed fruit, fruit jam, fruit jelly, or fruit pulp; jams, jellies, or preserves (other than fruit), edible (see note); fish, shell and other than shell, canned, pickled, or preserved (see note); vegetables, canned or preserved, including canned corn, canned hominy, canned pork and beans, canned scrapple, and canned tomatoes, but not including dried, evaporated, or pickled vegetables.</p> <p>Tomato pulp.....</p> <p>Peanut paste (peanut butter) (see note).....</p> <p>Soups (including broths and chowders) (see note)...</p> <p>Milk or cream, condensed or evaporated, liquid (not including milk or cream in glass or earthenware) (see note).</p> <p>Meats, canned (not including meats in glass or earthenware) (see note).</p> <p>Meats, combined with vegetables, canned (see note)</p> <p>Mince meat (see note).....</p> <p>Macaroni, spaghetti or vermicelli, prepared, with or without cheese, meat, and vegetables (see note).</p> <p>In packages as provided for less-than-carload shipments in southern classification, l. c. l.</p>	<p>Commodity group No. 14</p>

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Canned goods—Continued.	
Same, in packages as provided for straight carload shipments in southern classification, straight or mixed carloads, or in mixed carloads with sauerkraut, minimum weight 36,000 pounds.	Commodity group No. 15.
NOTE.—Will not apply for M. & O. R. R., either in l. c. l. or c. l. For M. & O. R. R.	Apply ratings as per southern classification.
(a) Fruit, canned or preserved in juice or sirup, or in liquid, other than brine, vinegar, or alcoholic liquor; fruit butter, crushed fruit, fruit jam, fruit jelly or fruit pulp, in packages as provided for straight carload shipments in southern classification.	
(b) Pickles, vinegar, sauerkraut, mustard (prepared), table sauces, horse-radish (prepared), olives or pimentos, in packages as provided for straight carload shipments in southern classification.	Commodity group No. 16.
Will apply on one or more of the articles specified in paragraph (a) in mixed carloads with one or more of the articles specified in paragraph (b), minimum weight 36,000 pounds.	
Cement, natural or portland (building) in cloth or paper bags, or in bulk in barrels, straight or mixed carloads, minimum weight 40,000 pounds.	Commodity group No. 17.
Charcoal, wood, in bulk, or in cloth or paper bags, or in bulk in barrels, c. l., minimum weight 24,000 pounds.	Commodity group No. 18.
Chert, in bulk or in packages, c. l., minimum weight 60,000 pounds, per ton of 2,000 pounds.	Commodity group No. 19.
Cinders, pyrites (not pyrites fines), in bulk or in packages, c. l., minimum weight 36,000 pounds.	Commodity group No. 5.
Clay and kaolin, crude, in bulk, c. l., minimum weight 40,000 pounds, per ton of 2,000 pounds.	Commodity group No. 20.
Clay or kaolin, washed and/or ground (other than fire clay), in bulk or in packages, c. l., minimum weight 40,000 pounds.	Commodity group No. 12—A.
Clay, fire, in bulk or in packages, straight carloads, or in mixed carloads with brick, fire, minimum weight 40,000 pounds.	Do.
Coal and coke, c. l., minimum weight 50,000 pounds, per ton of 2,000 pounds.	Commodity group No. 21.
Conduits, for underground work: Cement, clay, concrete, or terra cotta, loose or in packages, c. l., minimum weight 36,000 pounds.	Commodity group No. 3.
Cotton, in bales (see note).....	Commodity group No. 22.
NOTE.—No change has been proposed herein on cotton, but the present rates, which are the same as in effect between points in Georgia, have been brought forward. Petitioners serving both Alabama and Georgia will, at a later date, propose a revision in the cotton rates between points in those states.	
Cotton, burnt, in bags or bales; actual weight at shipping point to be charged for.	Cotton rates.
Where the cotton rate applies per bale, the rate per 100 pounds on burnt cotton will be one-fifth of the rate per bale.	

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Cottonseed hull shavings or fibre (not bleached or dyed), in bales.	Cotton-sweepings rates.
Cotton sweepings, notes or card strippings, in bales or bags pressed (refuse of cotton-spinning factories, knitting mills, or cottonseed-oil mills), l. c. l.	Commodity group No. 23.
Same, c. l., minimum weight 15,000 pounds.....	Commodity group No. 24.
Cotton waste, refuse (not cotton sweepings or pickings from platforms or warehouses or manufactured waste).	Cotton-sweepings rates.
Cotton ties and cotton tiebuckles, iron or steel, straight or mixed carloads, minimum weight 36,000 pounds.	Commodity group No. 26.
Dry goods:	
Cotton piece goods (see note), n. o. i. b. n., in boxes or in burlap-wrapped bales or rolls.	5.
NOTE.—The rating on cotton piece goods applies only on woven cloth, made wholly of cotton, in the original piece or in mill-end remnants, and does not apply on partially or wholly manufactured articles.	
Thread, ball sewing, including cotton thread on cones or cores, in barrels or boxes.	5.
Rope, cotton, in bundles, bales, barrels, or boxes, or in coils or on reels.	5.
Feed, mixed, composed of two or more of alfalfa meal; grain; grain products; corncob meal; hay; ground velvet or soya beans; meal, cottonseed, peanut, or soya bean; hulls, cottonseed, peanut, soya, or velvet bean; corn shucks or husks, whether treated with blackstrap molasses or not, in bags, any quantity.	D.
Feldspar, crude, in bulk or in packages, c.l., minimum weight, 36,000 pounds.	Commodity group No. 27
Fertilizer and fertilizer materials: Feldspar, ground (fertilizer filler and material), in bulk or in packages, c. l., minimum weight 36,000 pounds.	Commodity group No. 28.
Fertilizer and fertilizer materials, rated "C. L., Fertilizer rates," in southern classification, except as specifically published in individual items in these exceptions, c. l., minimum weight 30,000 pounds, per ton of 2,000 pounds.	Commodity group No. 29.
Fertilizer and fertilizer materials, rated "L. C. L., 20 per cent higher than fertilizer C. L.," in southern classification, l. c. l., per ton of 2,000 pounds.	Commodity group No. 29, plus 20 per cent.
Manure, stable, in bulk, c. l., minimum weight 30,000 pounds, per ton of 2,000 pounds.	Commodity group No. 25.
Pyrites, in bulk, c. l., minimum weight 40,000 pounds.	Commodity group No. 28.
Forest products:	
Agricultural implement or vehicle material, wooden, rough sawed, not sawed to shape, nor bent, c. l.	Lumber rates.
Billets or blocks—	
Round or split, other than cedar, mahogany, and walnut, to be manufactured, per car of 40,000 pounds.	Commodity group No. 30.
Sawed, other than cedar, cherry, mahogany, and walnut, c. l.	Lumber rates.
Cedar, round or split, other than pencil, c. l....	3 cents higher than lumber rates.

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APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Forest products—Continued.	
Cedar, pencil, c. l., minimum weight 30,000 pounds.	6.
Paving, creosoted or not creosoted, c. l.....	Lumber rates.
Bolts or butts—	
Heading, shingle or stave, to be manufactured, per car of 40,000 pounds.	Commodity group No. 30.
Box (other than cigar-box), or crate material, with or without cleats attached, loose or in bundles, c. l.	Lumber rates.
Boxes or crates, fruit or vegetable, k. d., with or without cleats attached, including wood, splint, or veneer boxes (inside carriers), s. u., nested, c. l.	Do.
Cigar-box material, c. l.....	Same as cigar-box lumber.
Cooperage stock, consisting of heading, hoops and staves, c. l.	Lumber rates.
Cross arms, telegraph or telephone, without pins or brackets, c. l.	Do.
Crossties, creosoted or not creosoted, hewn or sawed, c. l.	Do.
Dimension stock, edges glued together, c. l.....	Do.
Kindling, fire, pine, or other woods, in barrels, crates, or bundles, l. c. l.	6.
Same, c. l., minimum weight 30,000 pounds.....	Lumber rates.
Logs, not piles nor poles—	
Other than cedar, cherry, mahogany, and walnut, not hewn or sawed, to be manufactured, per car of 40,000 pounds.	Commodity group No. 30.
N. o. s., c. l.....	Lumber rates.
Cedar, cherry, mahogany, and walnut, not hewn nor sawed, c. l.	3 cents higher than lumber rates.
Cedar, cherry, mahogany, and walnut, hewn or sawed, c. l., minimum weight 30,000 pounds.	6.
Lumber, rough sawed or dressed, $\frac{3}{4}$ of an inch or over in thickness, other than cedar, cherry, mahogany, walnut, and cigar-box, including also baseboards (without moulding), casing, other than door or window, ceiling, other than panel, flooring (except compound), parquet and wood carpeting, laths, shingles, and siding, c. l., minimum weight 30,000 pounds.	Commodity group No. 8.
Lumber, cedar, cherry, mahogany, and walnut, c. l..	3 cents higher than lumber rates.
Lumber, cigar-box, c. l.....	5 cents higher than lumber rates.
Pickets, fence—	
Other than cedar, c. l.....	Lumber rates.
Cedar, c. l.....	3 cents higher than lumber rates.
Piles or piling, other than cedar, creosoted or not creosoted, c. l.	Lumber rates.
Piles or piling, cedar, c. l.....	3 cents higher than lumber rates.
Poles, telegraph or telephone, or hoop or hop, other than cedar, creosoted or not creosoted, c. l.	Lumber rates.
Poles, cedar, c. l.....	3 cents higher than lumber rates.

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Forest products—Continued.	
Posts, fence—	
Other than cedar, c. l.	Lumber rates.
Cedar, c. l.	3 cents higher than lumber rates.
Rails, fence—	
Other than cedar, c. l.	Lumber rates.
Cedar, c. l.	3 cents higher than lumber rates.
Slats—	
Cedar, pencil, c. l., minimum weight 30,000 pounds.	6.
Bed, in bundles, crates or loose, c. l., minimum weight 30,000 pounds.	3 cents higher than lumber rates.
Slabs, rough sawed, c. l.	Lumber rates.
Stakes, rough or dressed, other than cedar, c. l.	Do.
Stakes, cedar, c. l.	3 cents higher than lumber rates.
Timber, other than cedar, cherry, mahogany, and walnut, hewn or rough sawed, c. l.	Lumber rates.
Tow, shingle, in bulk or in packages, c. l., minimum weight 30,000 pounds.	Do.
Fruit, fresh:	
Apples, pears, or quinces, in barrels, boxes, crates, or in baskets with solid or slatted wooden tops, l. c. l.	6.
Same, in bulk, straight carloads, or in packages, straight or mixed carloads, minimum weight 24,000 pounds.	Commodity group No. 31.
Apricots, peaches, or plums, in barrels, boxes, crates, or in baskets with solid or wooden slatted tops, l. c. l.	4.
Same, in packages named, straight or mixed carloads, minimum weight 22,500 pounds.	6.
Handles, wooden, viz:	
Broom, mop, tool or implement, without metal attachments, in packages as provided for less-than-carload shipments in southern classification, l. c. l.	5.
Same, loose or in packages, straight or mixed carloads, minimum weight 30,000 pounds.	Commodity group No. 4.
Hulls, cottonseed, in bulk or in packages or bales, c. l., minimum weight 24,000 pounds.	Commodity group No. 32.
Ice, loose or in packages, c. l., minimum weight 24,000 pounds, per ton of 2,000 pounds.	Commodity group No. 33.
Insecticides, viz: Lime-sulphur solution, in bulk, in barrels, c. l., minimum weight 30,000 pounds, or in tank cars, minimum weight capacity of tank (see general rule 35 of consolidated classification).	Commodity group No. 34.
Iron and steel articles:	
Blooms, billets, ferromanganese, ferrosilicon, ingots, muck and puddle bars, pig iron and spiegel iron, straight or mixed carloads, minimum weight 25 tons, per ton of 2,240 pounds.	Commodity group No. 35.

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APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Iron and steel articles—Continued.	
Borings, filings, or turnings, mill cinder or mill scale, nut punchings, and scrap iron (see note), straight or mixed carloads, minimum weight, 40,000 pounds.	Commodity group No. 35.
NOTE.—The ratings specified herein on scrap iron will apply only on scrap or pieces of old or secondhand iron or steel which can not again be used for the purpose for which they were used when new, and said ratings will not apply on old or secondhand machinery, engines, boilers, or other similar articles, unless same are broken into scraps or pieces at the point of shipment before being tendered to the carrier for transportation.	
Fencing, wire, woven or welded, in rolls, c. l., minimum weight 30,000 pounds.	Commodity group No. 37.
Rails and railway-track material as specified under "Rails, iron or steel, and railway-track material, iron or steel," in southern classification, c. l., minimum weight 20 tons, per ton of 2,240 pounds.	Commodity group No. 36.
Special iron rated "C. L. Special Iron Rates" in the southern classification, except as specifically published in individual items in these exceptions, c. l., minimum weight as provided in southern classification.	Commodity group No. 37.
Lime (calcium): Common, hydrated, quick or slacked, in bulk, straight carloads, or in packages, straight or mixed carloads, minimum weight 30,000 pounds.	Commodity group No. 17-A
Live stock, as described below, subject to valuation, notes and rules as specified under "Live stock" in consolidated classification, in cars of 36 feet 6 inches or less in length:	
Donkeys, horses, and mules, c. l., minimum weight 22,000 pounds (see note).	Commodity group No. 39.
Cattle, c. l., minimum weight 20,000 pounds (see note).	Do.
Calves, goats, hogs, lambs, and sheep, c. l., single deck, minimum weight 17,000 pounds (see note).	Commodity group No. 40.
NOTE.—When cars of greater length are used the carload minimum weight shall be increased according to the following table:	
Cars over 36 feet 6 inches and not over 38 feet 6 inches, 5 per cent; cars over 38 feet 6 inches and not over 40 feet 6 inches, 10 per cent.	
Live poultry, subject to notes specified under "Poultry, live," in consolidated classification: In coops or crates, c. l., minimum weight 20,000 pounds.	Horses and mules rates (value not to exceed \$150 per head).
Marble, granite, stone or slate:	
Artificial architectural or concrete building blocks, loose or in packages, c. l., minimum weight 30,000 pounds.	Commodity group No. 12.
Blocks or slabs, rough quarried or sawed, loose or in packages, sand rubbed (or slushed), hammered or chiseled, loose or in packages, c. l., minimum weight 30,000 pounds.	Do.
Blocks, paving or curbing, c. l., minimum weight 30,000 pounds.	Do.

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification.)
Marble, granite, stone or slate—Continued.	
Crushed or rubble, in bulk, c. l., minimum weight 36,000 pounds.	Commodity group No. 5-B.
Limestone, whitestone, or marble, ground, powdered or pulverized (agricultural), c. l., minimum weight 60,000 pounds, per ton of 2,000 pounds.	Commodity group No. 41.
Meal and cake, cottonseed.....	Apply ratings as per southern classification.
Meal and cake, peanut or soya bean.....	Cottonseed meal and cake rates.
Meat, fresh, all kinds (including dressed poultry), c. l., minimum weight 20,000 pounds.	10 cents higher than B, but not higher than fourth class.
Melons:	
Citrons or watermelons, loose or in packages, c. l., minimum weight 24,000 pounds.	Commodity group No. 38.
Cantaloupes, honey-dew melons or muskmelons, in barrels, boxes, crates, or in baskets with solid or slatted wooden tops, c. l., minimum weight 24,000 pounds.	Commodity group No. 38, plus 25 per cent.
Molasses and syrup (not coloring, fountain, flavoring or medicated syrups) and corn sugar:	
Molasses, beet, cane or sorghum;	
Syrup, cane or sorghum;	
Corn sugar;	
Corn syrup;	
In packages as provided in consolidated classification, straight or mixed carloads, minimum weight 36,000 pounds, or in tank cars (see general rule 35, consolidated classification), minimum weight 50,000 pounds, c. l.	Commodity group No. 42.
Same in packages as provided in consolidated classification, l. c. l.	Commodity group No. 43.
Naval stores:	
Pitch or tar, pine.....	Rosin rates.
Rosin, in bulk in barrels or boxes, any quantity.....	Commodity group No. 44.
Rosin dross.....	Rosin rates.
Turpentine, spirits of, or wood turpentine, in bulk in barrels, any quantity, or in tank cars (see general rule 35, consolidated classification), weight for computation 7.2 pounds per gallon, c. l.	Commodity group No. 45.
Oils:	
Oil, cottonseed, subject to notes and rules as specified under "Oil, cottonseed" in consolidated classification: In bulk in barrels, l. c. l.	5.
Same, c. l., minimum weight 24,000 pounds.....	Commodity group No. 34.
In combination cars (box and tank), c. l.....	Do.
In tank cars (see sec. 1 of general rule 35 of consolidated classification), c. l.	Do.
Oil, petroleum and petroleum products, subject to notes as specified under "Petroleum or petroleum products" in consolidated classification:	
(a) Benzine, gasoline, naphtha, and petroleum gas, liquefied, vapor tension at 100° F. not exceeding 25 pounds per square inch, in iron drums or iron barrels, actual weight, or in metal cans, securely packed in cases, straight or mixed carloads, minimum weight 26,000 pounds, or in tank cars, mini-	Commodity group No. 46.

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification).
Oils—Continued.	
mum capacity of tank, but not less than 26,000 pounds (see general rule 35 of consolidated classification), c. l.	
(b) Coal oil, crude oil, distillates, fuel oil, gas oil, grease (not axle), kerosene oil, lubricating oil (not axle grease), miners' oil, paraffine oil, paraffine wax, refined oil, road oil containing less than 30 per cent asphaltum, soap oil, transformer oil and wood oil, in metal cans completely cased, or in bulk in barrels or iron drums, straight or mixed carloads, minimum weight 26,000 pounds, or in tank cars, minimum capacity of tank, but not less than 26,000 pounds (see general rule 35 of consolidated classification), c. l.	Commodity group No. 46.
Mixed carloads of one or more of the articles specified in paragraph (a), in iron drums or barrels, actual weight, or in metal cans, securely packed in cases, with one or more of the articles specified in paragraph (b), in metal cans completely cased or in bulk in barrels or iron drums, minimum weight 26,000 pounds.	Do.
Oil, road (petroleum tailings or residuum, such as used for dust preventive or road binder, and containing 30 per cent or more asphaltum), in bulk in barrels, c. l., minimum weight 36,000 pounds, or in tank cars (see general rule 35 of consolidated classification), c. l.	Commodity group No. 6.
Oil, foots or sediment, cottonseed:	
In bulk in barrels.....	Cottonseed-oil rates.
In tank cars (see general rule 35 of consolidated classification), weight for computation 7.8 pounds per gallon, c. l.	Do.
Ore, iron, crude (not ground), in bulk or in packages, c. l., minimum weight 40,000 pounds, per ton of 2,000 pounds.	Commodity group No. 20-A.
Peanuts, raw, not shelled, in bulk or in packages, c. l., minimum weight 24,000 pounds.	Commodity group No. 47.
Pickles, vinegar, sauerkraut, mustard (prepared), table sauces, horse-radish (prepared), olives or pimentos, in packages as provided for straight carload shipments in consolidated classification, straight or mixed carloads, minimum weight 36,000 pounds.	Commodity group No. 15.
Pipe, sewer, culvert and flue; fittings; flue linings; flue tops; chimney caps; earthen or concrete; straight or mixed carloads, minimum weight 26,000 pounds.	Commodity group No. 48.
Plaster, wall, building, moulding, fancy and decorating (including plaster of paris), and ground gypsum rock, in packages, straight or mixed carloads, minimum weight 40,000 pounds.	Commodity group No. 17.
Roofing material, consisting of coal tar or pitch, in bulk in barrels, roofing or building paper or felt roofing (sheet), packed or in bundles or rolls, and gravel and slag, mixed carloads, minimum weight 30,000 pounds (see note).	Commodity group No. 49.
NOTE.—The rates hereby authorized will apply only when the actual weight of gravel or slag represents 71 per cent or more of the actual gross weight of each shipment.	

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification).
Salt, common (sodium chloride), in bulk or in packages, c. l., minimum weight 30,000 pounds.	Commodity group No. 50.
Sand, moulding or moulders' dust, in bulk or in packages, c. l., minimum weight 30,000 pounds.	Commodity group No. 27-A.
Sand, other than moulding, and gravel, in bulk, c. l., minimum weight 60,000 pounds, per ton of 2,000 pounds.	Commodity group No. 19.
Sawdust or shavings, wood, in bulk or in packages, c. l., minimum weight 24,000 pounds.	Commodity group No. 8.
Seed, cotton, in bags, barrels or boxes, l. c. l.	Commodity group No. 51 plus 20 per cent.
Same, in bulk or in packages, c. l., minimum weight 30,000 pounds (see note).	Commodity group No. 51.
NOTE.—One-remnant shipments of cotton seed in bags or in bulk, 20,000 pounds minimum, will be transported from each seed house at each shipping point at the end of each season at the carload rate.	
Shale, crude, in bulk or in packages, c. l., minimum weight 36,000 pounds.	Commodity group No. 5.
Silo material, consisting of staves and other wooden materials used in constructing silos, cut to length and fitted, with or without equipment of silo doors, door frames, door hangers, hoops, hoop bolts, shoes, bands or lugs, loose or in packages, c. l., minimum weight 30,000 pounds.	Commodity group No. 4.
Slag, granulated or lump, in bulk or in packages, c. l., minimum weight 36,000 pounds.	Commodity group No. 5-B.
Soap, soap powders, washing powders, or scouring compounds, or cleaning compounds, dry: When the actual value does not exceed 12 cents per pound, the actual maximum value to be stated by shipper in writing in shipping order: In bulk in barrels or boxes or in inner containers, other than glass or earthenware, or in wrappers, in barrels or boxes, l. c. l.	Commodity group No. 52.
Same, straight or mixed carloads, minimum weight 30,000 pounds.	Commodity group No. 53.
Sodium (soda), bicarbonate of (saleratus), in packages as provided in consolidated classification, c. l., minimum weight 30,000 pounds.	6.
Stoves and ranges (not including alcohol, gas, gasoline, oil, or vapor stoves or ranges); stove hollowware and other stove furniture (not tinware or enameled ware); stove parts, cast or sheet iron or steel; stove plates, stove boards, stovepipe, side seams not closed; straight or mixed carloads, minimum weight 20,000 pounds (see note).	Commodity group No. 54.
Same (except stovepipe, side seams not closed), in packages as provided for less-than-carload shipments in consolidated classification, l. c. l.	Commodity group No. 55.
NOTE.—Stoves or ranges, not crated or boxed, must be so braced in the car as to prevent shifting of the load and to insure safe transportation.	
Sugar, beet or cane, in cartons or bags in barrels or boxes, in double bags or in bulk in barrels, l. c. l.	Commodity group No. 56.
Same, c. l., minimum weight 33,000 pounds.	Commodity group No. 57. 60 I. C. C.

APPENDIX 6—Continued.

In cents per 100 pounds, unless otherwise shown.	Class or commodity group (subject to rule 1, section 2, of consolidated classification).
Tar, coal tar or petroleum tar (coal pitch or gas-house pitch), in bulk in barrels, straight or mixed carloads, minimum weight 40,000 pounds in tank cars (see general rule 35 of consolidated classification), c. l.	Commodity group No. 6.
Tile and tiling: Border, earthen or concrete, c. l., minimum weight 30,000 pounds.	Commodity group No. 48.
Hollow fireproof, building, earthen, concrete or gypsum, straight or mixed carloads, minimum weight 40,000 pounds.	Commodity group No. 11.
Farm drain, earthen or concrete, c. l., minimum weight 30,000 pounds.	Do.
Ridge, earthen or concrete, c. l., minimum weight 30,000 pounds.	Commodity group No. 48.
Roofing, earthen or concrete, with or without necessary fittings, c. l., minimum weight 30,000 pounds.	Do.
Sidewalk, concrete or cement, c. l., minimum weight 30,000 pounds.	Commodity group No. 12.
Silo, earthen or concrete, c. l., minimum weight 30,000 pounds.	Commodity group No. 11.
Turpentine-cup aprons and hangers: Iron or steel—	
In barrels, boxes, bundles, or crates, l. c. l.	6.
Same, in packages, straight or mixed carloads, minimum weight, 30,000 pounds.	Commodity group, No. 58.
Turpentine cups, with or without aprons or hangers: Iron or steel—	
Nested, in barrels, boxes, or crates, l. c. l.	6.
Nested or not nested, in packages or loose, c. l., minimum weight, 30,000 pounds.	Commodity group, No. 58.
Vegetables, artichoke tubers, beets without tops, cabbage, carrots without tops, onions without tops, parsnips without tops, potatoes, sweet or other than sweet, pumpkins, turnips without tops, or winter squash, in bags, barrels with or without cloth tops, boxes, crates or in baskets, with slatted wooden or solid tops, l. c. l.	6.
Same, in bulk, straight carloads, or in packages, straight or mixed carloads, minimum weight, 24,000 pounds, or in mixed carloads with apples, pears, or quinces, in barrels, boxes, crates or in baskets, with solid or slatted wooden tops, minimum weight, 24,000 pounds.	Commodity group, No. 31.
Wall coping, earthen or concrete, c. l., minimum weight, 30,000 pounds.	Commodity group, No. 48.
Waste, jute or mixed jute and woolen, or mixed jute and cotton refuse or tailings (not manufactured waste) in machine-pressed bales.	Cotton-sweepings rates.
Wood, to be used for fuel or charcoal making, c. l., minimum, 10 cords, per cord.	Commodity group, No. 59.

No. 11124.

PERRY COUNTY COAL CORPORATION ET AL.

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted June 4, 1920. Decided December 22, 1920.

Rates on bituminous coal, in carloads, from Coulterville, Ill., to destinations in Missouri on the lines of the Illinois Southern and Mississippi River & Bonne Terre railways, found to be violative of the long-and-short-haul provision of the fourth section of the interstate commerce act. Complaint dismissed.

R. W. Ropiequet for complainants.

John S. Burchmore for Fifth and Ninth Districts Coal Bureau, intervener.

A. P. Humburg and *B. J. Rowe* for Illinois Central Railroad Company.

John F. Finerty and *Royal McKenna* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

WOOLLEY, *Commissioner*:

The issues here presented were made the subject of a report proposed by the examiner, and exceptions thereto were filed by defendants.

The complaint herein was brought by two corporations, one of which operates a bituminous coal mine at Coulterville, Ill., and is hereinafter referred to as complainant, the other being its selling agent. It is alleged that carload rates on coal from complainant's mine to points in Illinois and Missouri on the Illinois Southern and Mississippi River & Bonne Terre railways are unjust, unreasonable, unjustly discriminatory, unduly prejudicial, and violative of the long-and-short-haul provision of section 4 of the act to regulate commerce. Complainant prays that defendants be required to establish through routes and joint rates from its mine to the destinations named in conformity with section 15 of the act. The evidence of record relates solely to the alleged violations of the fourth section, and complainant admits that its complaint will be satisfied by the

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correction of these alleged violations. Though the complaint assails both intrastate and interstate rates, only the latter will be considered. Rates stated herein are in amounts per net ton and are those in effect on the date of submission.

Coulterville is the junction of the St. Louis division of the Illinois Central Railroad and the Illinois Southern Railway. Complainant's mine is situated on the Illinois Central about half a mile south and east of the junction point. It is also connected with the Illinois Southern by a switch track, which is out of repair and apparently has been seldom used.

For rate-making purposes coal-mining points in southern Illinois are divided into a number of groups or districts, among which are the Belleville, Du Quoin, and southern Illinois groups. Coulterville is usually included in the Belleville group. From mines on its lines in the three groups above named generally to the territory of destination here considered the Illinois Central publishes joint rates in connection with the Illinois Southern and the Mississippi River & Bonne Terre railways, applicable via Coulterville and Derby, Mo. The rates are the same from all points of origin, varying from \$1.20 to \$1.45 according to grade of coal and destination. By a specific exception in the tariff these rates do not apply from Coulterville, and it was testified that this exception was insisted on by the Illinois Southern, which apparently desired to secure the haul from complainant's mine to the Missouri destinations without sharing the earnings therefrom with the Illinois Central. Hence, in making shipments to these destinations from its Illinois Central sidetrack, and such appears to have been the more convenient course, complainant has been compelled to pay the local rate of the Illinois Central for the half-mile haul to the junction with the Illinois Southern plus the latter's rate beyond. For the first factor the Illinois Central provides a switching charge of 10 cents per ton, minimum \$2, maximum \$4 per car, when the cars are not furnished by it. When cars are supplied by the Illinois Central, as they apparently have been in the past, the applicable rate, since June 25, 1918, has been the Illinois distance rate of 58 cents per ton for two miles or less. The Illinois Southern publishes joint rates from Coulterville to points on the Mississippi River & Bonne Terre which are the same as those maintained by the Illinois Central to the same points from the Belleville group, referred to above, with the exception of four destinations to which the rates of the Illinois Southern are 10 cents per ton higher. From Coulterville to points on its own line in Missouri the local rates of the Illinois Southern are from 5 to 15 cents per ton lower than the joint rates to the same points from the Belleville group, published by the Illinois Central. It will therefore be seen that the combination

rates applied to shipments from complainant's mine to the Missouri destinations mentioned in every case have been higher than the joint rates published by the Illinois Central from the Belleville group to the same points. Complainant's mine is directly intermediate to mines at Pinckneyville and Winkle in the Belleville group and also to those in the Du Quoin and southern Illinois groups, from which the same rates apply, over the through routes specified in the Illinois Central tariff referred to above. There is no evidence of any movement over these routes from the more distant points, but in maintaining lower rates therefrom than from complainant's mine to the Missouri destinations here considered defendants have manifestly departed from the principle of the long-and-short-haul provision of the fourth section of the act. These departures are not protected by applications on file with us or otherwise.

The Fifth and Ninth Districts Coal Bureau was permitted to intervene for the purpose of protecting the interests of certain southern Illinois coal operators in so far as they might be affected by this proceeding, but it introduced no evidence and seeks no affirmative relief. There are two other mines at Coulterville, whose owners are members of the intervening bureau, but no attack in their behalf is made on the rates from their mines to the destinations here considered. Neither of these mines has a switch connection with the Illinois Southern.

The Illinois Southern Railway went into the hands of a receiver in September, 1918, and on December 12, 1919, its operation was ordered discontinued by the United States district court for the northern district of Illinois. It is uncertain when operation will be resumed. The Illinois Southern filed no answer to the complaint, was not represented at the hearing, and prior thereto had attempted to revoke its concurrence in the tariff of the Illinois Central publishing rates via Coulterville to the destinations in Missouri, but the revocation was rejected by us because of failure to give proper notice.

The Illinois Central does not deny or attempt to justify the fourth section deviations complained of, but requests that it be not required to amend its tariffs until the future status of the Illinois Southern is determined. Since no traffic is moving over the latter line, these deviations are of no practical importance at the present time. However, as we can not sanction the continued publication of rates which are clearly at variance with the provisions of the law, the defendant carriers will be expected immediately to reform their tariffs in conformity with the fourth section of the act. The complaint will be dismissed.

No. 11761.

IOWA PASSENGER FARES AND CHARGES.

IN THE MATTER OF INTRASTATE FARES AND CHARGES
OF THE CHICAGO & NORTH WESTERN RAILWAY
COMPANY AND OTHER CARRIERS IN THE STATE OF
IOWA.

Submitted November 30, 1920. Decided January 11, 1921.

Certain fares and charges required by state authority to be maintained by the respondent steam railroads within the state of Iowa found to be lower than the corresponding interstate fares and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares and charges prescribed which will remove such preference, prejudice, and discrimination.

J. H. Henderson and R. P. Thompson for Board of Railroad Commissioners of the state of Iowa.

H. M. Havner and E. D. Perry for state of Iowa.

Alfred P. Thom, O. W. Dynes, J. N. Hughes, J. G. Gamble, W. F. Dickinson, W. H. Jacobs, R. M. Shaw, M. M. Joyce, M. L. Countryman, R. V. Fletcher, R. L. Kennedy, Bruce Scott, K. F. Burgess, T. J. Norton, J. L. Coleman, N. S. Brown, Adams & Hise, R. H. Widdicombe, F. W. Sargent, and A. A. McLaughlin for respondent carriers.

John E. Benton for 42 state commissions.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Pursuant to our findings in Ex Parte 74, *Increased Rates 1920*, 58 I. C. C., 220, the steam carriers subject to our jurisdiction serving the western group, as described in the report in that case, in which the state of Iowa is located, made increases in the interstate rates, fares, and charges applying in the western group, including a 20 per cent increase in passenger fares and a surcharge upon passengers in sleeping and parlor cars amounting to 50 per cent of the charge for space in such cars, such charges to be collected in connection with the charge for space and to accrue to the rail carriers. These increases became effective August 26, 1920, the interstate passenger

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fares which went into effect in the western group at that time being based upon 3.6 cents per mile.

Upon application of the railroads operating in the state of Iowa to the Board of Railroad Commissioners of the state of Iowa, hereinafter referred to as the Iowa commission, for permission to make increases in the Iowa intrastate rates, fares, and charges similar to those authorized by us in the western group in Ex Parte 74, the Iowa commission by its order of August 17, 1920, authorized increases substantially in accordance with the carriers' petition except that the request for advance in passenger fares and the assessment of a surcharge upon passengers in sleeping and parlor cars was dismissed for lack of authority on the part of the Iowa commission, under the statutes of Iowa, to entertain the petition. The passenger fares at present in effect intrastate in Iowa are based upon 3 cents per mile, which basis was established by the President during federal control. Section 2077 of the Supplemental Code of Iowa, 1913, at present in effect, provides that—

all railroad corporations according to their classifications as herein prescribed shall be limited to compensation per mile for the transportation of any person with ordinary baggage not exceeding one hundred and fifty pounds in weight as follows: Class A, two cents; Class B, two and one-half cents; Class C, three cents; and for children twelve years of age or under, one-half the rate above prescribed.

Substantially all the operated railroad mileage in Iowa belongs to and is operated by "Class A" roads and "Class B" roads as those terms are used in the above quotation. The right of the carriers in Iowa at the present time to exact intrastate passenger fares in excess of those permitted by the Iowa state law is in litigation in the courts, but that proceeding is not being pressed pending the decision of this case.

Subsequent to the order of the Iowa commission of August 17, 1920, above referred to, a petition and an amendment thereto were filed with us by or on behalf of all of the steam railroads operating in Iowa subject to our jurisdiction, seeking relief in accordance with the provisions of section 13 of the interstate commerce act with respect to passenger fares and the surcharges on sleeping and parlor car passengers. Pursuant to that petition this investigation was instituted by us. All the railroads subject to our jurisdiction operating in the state of Iowa were made respondents, and the Governor of Iowa, the Iowa commission, the respondent carriers, and the general public were given due notice. A hearing has been held, and the views of the parties in interest have been presented to us on briefs and by oral argument.

No evidence was presented except by the respondents. Numerous cities and towns located in Iowa on or near the state boundary com-

pete for business and the establishment of industries with near-by cities and towns in other states, and the Iowa points have an advantage by reason of the existence of intrastate passenger fares in Iowa on a basis lower than the interstate basis. One example will be sufficient. From Council Bluffs, Iowa, to Burlington, Iowa, the distance is 286.7 miles, and the intrastate fare is \$8.61. From Omaha, Nebr., the distance to Burlington is 290.7 miles, and the interstate fare is \$10.64. There are instances in which one road connects two cities by an intrastate line, while another connects the same two cities by an interstate line. For instance, the Chicago, Burlington & Quincy runs from Davenport, Iowa, to Dubuque, Iowa, partly through the state of Illinois, while the Chicago, Milwaukee & St. Paul line between those two points is wholly within the state of Iowa. The result is that the interstate line must meet the fares and charges of the intrastate line or lose the business.

So long as different bases of fares are in effect, interstate and intrastate, and no surcharges upon sleeping and parlor car passengers are in effect intrastate, it is possible for interstate passengers to buy separate tickets for that portion of their journey within the state of Iowa, the total charges being less than those that would accrue at the through interstate fares and charges. This practice, which it is practically impossible to prevent, not only reduces passenger revenue but results in greater expense for printing and selling tickets and auditing, slows up operation, reduces the amount of the war tax paid by passengers, and reduces the amount of the sleeping and parlor car surcharges. At the time of the hearing of this case the intrastate passenger fares in Illinois, Wisconsin, Minnesota, and Nebraska were based on 8 cents per mile, and in South Dakota and Missouri on 8.6 cents per mile. The passenger fares in the states having the 8-cent basis were held to that level by legislative enactment or injunction proceedings. Since the hearing we have found that the maintenance of intrastate passenger fares in Illinois, Wisconsin, and Minnesota, lower than those established for interstate transportation in the same territory under authority of Ex Parte 74, unduly preferred intrastate passengers, unduly prejudiced interstate passengers, and unjustly discriminated against interstate commerce, and have ordered the removal of said preference, prejudice, and discrimination by increases of the intrastate fares. *Intrastate Rates within Illinois*, 59 I. C. C., 350; *Wisconsin Passenger Fares*, 59 I. C. C., 391; *Minnesota Fares and Charges*, 59 I. C. C., 502.

While the respondents offered no figures as to the relative expense of interstate and intrastate passenger transportation their witnesses testified generally that, while it is true that the cost per mile of operating a purely intrastate train may be less than the cost of oper-

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ating a through interstate train, the relatively shorter hauls and the smaller number of passengers carried on the intrastate train will result in a higher cost per passenger-mile than for the interstate train. The respondents offered figures showing that the total mileage of all the class I, II, and III railroads serving the state of Iowa was 68,277.35 miles, of which 10,149.78 miles are located within that state; and that, if the increases in passenger fares and the surcharges on sleeping and parlor car passengers authorized by us in Ex Parte 74, were applied to the actual intrastate passenger traffic in Iowa for the calendar year 1919, the result would be an increase of \$3,234,500 over the revenues received.

Interstate and intrastate passengers are transported in the same cars and trains under identical conditions and receive the same service. The record discloses substantially no difference in the conditions affecting interstate and intrastate passenger traffic in Iowa.

On behalf of the state of Iowa and the Iowa commission it is insisted that there has been no showing that the Iowa intrastate passenger fares and charges do not furnish their proper proportion of a reasonable return upon the value of the railroad property in the state of Iowa, and it is contended that our jurisdiction over intrastate fares extends only to instances in which it is shown that such fares result in unjust and unreasonable preference and advantage to particular individuals or localities in intrastate commerce and in unjust and unreasonable discrimination and prejudice against particular individuals or localities in interstate commerce. Similar contentions were made and discussed at length in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, and *Intrastate Rates within Illinois, supra*, hereinafter referred to as the New York and Illinois cases, respectively, and it seems unnecessary further to enlarge upon that discussion here.

In *Increased Rates, 1920, supra*, at page 254, in approving freight-rate increases of electric lines equal to those approved for trunk lines in the same territory, we said that such approval was "not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines." There was, however, no approval of increases in such fares, and therefore none of the electric lines respondent are included in our findings herein. There is little or no evidence in the record as to the relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, extra fares on limited trains, or club-car charges, and such fares and charges therefore will also be excepted from our findings herein.

The issues here presented relating to passenger fares and surcharges upon passengers in sleeping and parlor cars are in all respects similar to those presented in the New York and Illinois cases.

Following the New York and Illinois cases and upon this record, subject to the exceptions above noted in respect to commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, extra fares on limited trains, and club-car charges, we are of opinion and find that the increases made by the respondent steam railroads, under Ex Parte 74 relating to passenger fares, and now in effect, result in reasonable passenger fares for interstate transportation within the group considered in this proceeding and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Iowa has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges; in undue prejudice to persons traveling in interstate commerce within the state of Iowa and between points in the state of Iowa and points in other states; in undue preference and advantage to persons traveling intrastate in Iowa; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares which shall correspond with the increases heretofore made by said respondents in interstate passenger fares.

We further find that the surcharges made by said respondent steam railroads under Ex Parte 74 upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce in the group considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Iowa has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Iowa and between points in the state of Iowa and points in other states; in undue preference and advantage to persons so traveling intrastate in Iowa; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid upon passengers so traveling in interstate commerce.

We further find that, whether the aforesaid passenger fares or surcharges pertain to transportation in interstate commerce or to trans-

portation in intrastate commerce, the transportation services, in each instance, are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the authorities of the state of Iowa or any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fare or charge on the ground that the latter is not related to the interstate fares or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

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No. 11860.

MONTANA RATES AND FARES.

IN THE MATTER OF INTRASTATE RATES AND FARES
OF THE CHICAGO, BURLINGTON & QUINCY RAILROAD
COMPANY AND OTHER CARRIERS IN THE STATE OF
MONTANA.

Submitted December 15, 1920. Decided January 11, 1921.

Certain fares and charges required by state authority to be maintained by the respondent steam railroads within the state of Montana found to be lower than the corresponding interstate fares and charges authorized in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares and charges prescribed which will remove such preference, prejudice, and discrimination.

E. G. Toomey for Board of Railroad Commissioners of the state of Montana.

Norris, Hurd & Rhoades and *W. B. Rhoades* for Montana Lumber Manufacturers' Association.

Bruce Scott, O. W. Dynes, E. C. Lindley, H. A. Scandrett, A. H. Lossow, C. W. Bunn, D. F. Lyons, M. S. Gunn, and B. W. Scandrett for respondent carriers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, we authorized all steam railroads subject to our jurisdiction serving the mountain-Pacific group, as described in the report in that case and in which the state of Montana is located, to make general increases in their interstate rates, fares, and charges in that group, including a 25 per cent increase in freight rates; a 20 per cent increase in passenger fares; a 20 per cent increase in excess-baggage charges, with the proviso that where stated as a percentage of, or dependent upon, passenger fares, the increase in the latter would automatically effect the increase in the excess-baggage charges; a 20 per cent increase in milk and cream rates; and a surcharge upon passengers in sleeping and parlor cars of 50 per cent of the charge for space in such cars,
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to accrue to the rail carriers. The carriers increased their interstate rates, fares, and charges in the mountain-Pacific group conformably to that authorization, effective August 26, 1920. They also made increases of 20 per cent in their interstate charges for handling newspapers on passenger trains, charges for parking special baggage cars, and in their minimum interstate charges for movements of special passenger and baggage cars and special passenger trains, which increases were not included in the authorization granted in Ex Parte 74.

Upon applications of the carriers to the Board of Railroad Commissioners of the state of Montana, hereinafter referred to as the Montana commission, for authority to make increases in their intrastate rates, fares, and charges in the state of Montana, similar to those authorized by us in Ex Parte 74, as well as in the charges for handling newspapers, for parking special baggage cars, and for movements of special cars and trains, above mentioned, the Montana commission entered its reports and orders Nos. 294 and 295 of August 10 and August 31, 1920, respectively, granting the application for a 25 per cent increase in freight rates; denying upon its merits the application for permission to impose a surcharge upon passengers in sleeping and parlor cars; and denying, without prejudice to their renewal, all the other applications for increases. The Montana commission stated that under the state law it was without power to authorize increases in the passenger fares; and the increases in milk and cream rates were denied at that time because it was thought that such increases should be considered in connection with a pending application for increases in the express rates on milk and cream.

The state law which, it was stated, restricted the power of the Montana commission to authorize an increase in passenger fares is an act of the legislative assembly of Montana approved by the Governor March 4, 1905, by which it is provided, in substance, that on and after April 1, 1905, the maximum charge for passenger transportation in the state should be 3 cents per mile. There is some question as to whether the provisions of this act were repealed by implication by chapter 37 of the laws of Montana of 1907, establishing the Montana commission, but in the absence of any judicial expression on this point the Montana commission feels that its power in connection with passenger fares is limited by the 3-cent fare law.

Intrastate passenger fares in Montana are, and for a number of years have been, based upon 3 cents per mile and, therefore, that portion of the Director General's general order No. 28 establishing a basis of 3 cents per mile for passenger fares generally throughout the country did not result in a change of the Montana intrastate fares. The interstate passenger fares in the group in which Mon-

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tana is situated, which became effective August 26, 1920, are based upon 3.6 cents per mile. The excess-baggage rates in this group, both interstate and intrastate, were and are made dependent upon the passenger fares, the rates per 100 pounds of excess baggage being the same wherever the interstate and intrastate fares are the same, but the increase of the interstate passenger fares on August 26, 1920, automatically resulted in higher excess-baggage charges, while the intrastate excess-baggage charges remained unchanged.

Subsequent to the reports and orders of the Montana commission, above referred to, a petition was filed with us by or on behalf of all the steam railroads operating in Montana subject to our jurisdiction, seeking relief in accordance with the provisions of section 13 of the interstate commerce act with respect to passenger fares, excess-baggage rates, charges for handling newspapers on passenger trains, charges for parking special baggage cars, minimum charges for movements of special passenger and baggage cars and special passenger trains, and surcharges upon passengers in sleeping and parlor cars. In view of the indication in the reports and orders of the Montana commission that the milk and cream rates would be considered in connection with the proposed increased express rates, the carriers do not at this time bring in issue the rates on those articles. Pursuant to the petition above mentioned this investigation was instituted by us. All of the railroads subject to our jurisdiction operating within the state of Montana were made respondents, and the governor of Montana, the Montana commission, the respondent carriers, and the general public were given due notice. A hearing has been held and the views of the parties in interest have been presented to us on briefs.

The Montana Lumber Manufacturers' Association intervened at the hearing in opposition to an increase in the intrastate rates, fares, and charges.

No evidence is before us as to the relationship between interstate and intrastate excursion, convention, and other fares for special occasions; commutation and other multiple forms of tickets; extra fares on limited trains; or club-car charges. Therefore, the term "fare" as used herein will refer only to standard local or interline fares. Also, our findings will be restricted to passenger fares, excess-baggage charges, and surcharges upon sleeping and parlor car passengers upon steam railroads, as no specific increases in similar fares or charges of electric lines or in charges of any carriers for handling newspapers on passenger trains, for parking special baggage cars, or for movements of special passenger or baggage cars, or special passenger trains, were approved by us in Ex Parte 74.

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The existence of the lower basis of passenger fares and excess-baggage charges, and the absence of sleeping and parlor car surcharges in the state of Montana make it possible for interstate passengers to buy separate tickets for that portion of their journey within the state, resulting in lower total charges for the through transportation than would accrue at the through interstate fares and charges, which latter are paid by other passengers riding on the same trains and cars who do not avail themselves of the opportunity to obtain the benefit of the lower intrastate basis. This practice, which it is very difficult to prevent, not only results in the direct reduction of the carriers' revenues, but reduces the amount of the war taxes paid by passengers, causes additional expense to the carriers, and gives rise to much dissatisfaction among, and difficulty with, their patrons. Cities and towns located outside of Montana are prejudiced and points in Montana with which they compete are preferred by reason of the lower basis of fares and charges applicable intrastate than interstate. For instance, from Paradise, Mont., the distance to Spokane, Wash., is 186.1 miles, and the interstate fare \$6.71; from Paradise to Butte, Mont., the distance is 190.8 miles and the intrastate fare is \$5.73.

The respondents presented no figures showing the relative expense of operation interstate and intrastate, but they testified generally that owing to the shorter hauls, and lighter volume of traffic intrastate than interstate, the cost per passenger-mile for intrastate operation was higher.

The respondent steam carriers operate a total mileage of 42,058.25 miles, of which 5,290.73 miles are in the state of Montana. Exhibits filed by the respondents show that if the increases in passenger fares, excess-baggage charges, and the surcharge upon sleeping and parlor car passengers authorized by us in Ex Parte 74 were applied to the actual intrastate passenger traffic in Montana, for the year ended June 30, 1920, the result would have been increases of \$896,361.90 in passenger revenue, \$7,944.68 in excess-baggage revenue, \$89,154.53 in surcharges upon passengers in sleeping cars, and \$13,828.29 in surcharges upon passengers in parlor and chair cars over the revenues received. Increases in intrastate passenger fares similar to those authorized by us in Ex Parte 74 have been made in the states of Washington, Oregon, Idaho, Wyoming, and South Dakota.

Intrastate passengers are transported in the same trains and cars as interstate passengers and receive the same service. The record discloses substantially no difference in the conditions affecting interstate and intrastate passenger travel in Montana.

For the state of Montana and the Montana commission it is contended that section 18 of the interstate commerce act, in so far as it

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gives us, or attempts to give us, power to prescribe changes in intrastate rates in Montana fixed by authority of the state is unconstitutional; and that in any event, in making orders under section 13 we are restricted to instances in which it is shown that particular individuals or localities in intrastate commerce are unduly and unreasonably preferred to the undue and unreasonable prejudice of particular individuals or localities in interstate commerce. Similar contentions were made and discussed in *Rates, Fares, and Charges of N. Y. O. R. B. Co.*, 59 I. C. C., 290, and *Intrastate Rates within Illinois*, 59 I. C. C., 350, hereinafter referred to as the New York and Illinois cases, respectively, and it seems unnecessary further to enlarge upon that discussion here.

The Montana commission further contends that until it is judicially determined whether the power to authorize increases in the present passenger fares and charges in the state of Montana is retained by the legislative assembly or has been reposed in the Montana commission, and until the body having the power has determined the applications of the carriers for increases upon their merits, that we are without jurisdiction in the premises. It appears, however, that increases in the intrastate fares and the charges here under consideration were prevented by the state of Montana; that to that extent the present fares and charges were made or imposed by authority of the state; and, therefore, that the carriers were within their rights under the interstate commerce act in seeking relief from us.

The issues here presented relating to passenger fares and surcharges upon passengers in sleeping and parlor cars are in all respects similar to those presented in the New York and Illinois cases. The issue with respect to excess-baggage charges is the same as that presented in the case first mentioned.

Following the New York and Illinois cases, and upon this record, we are of opinion and find that the increases in standard passenger fares and excess-baggage charges made by the respondent steam railroads under the authority granted in Ex Parte 74, and now in effect within the group considered in this proceeding, result in reasonable passenger fares and excess-baggage charges for interstate traffic within that group, and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Montana has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges, in undue prejudice to passengers traveling in interstate commerce within the state of Montana and between points in the state of Montana and points in other states; in undue preference of, and advantage to, passengers traveling intrastate within the state

of Montana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said standard intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in standard interstate passenger fares and excess-baggage charges.

We further find that the surcharges made by said respondent steam railroads under Ex Parte 74, and now in effect within the group considered in this proceeding, result in reasonable charges upon passengers so traveling in interstate commerce within that group, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Montana has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Montana and between points in the state of Montana and points in other states; in undue preference and advantage to persons so traveling intrastate in Montana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid upon passengers so traveling in interstate commerce. •

We further find that, whether the aforesaid passenger fares, excess-baggage charges, or surcharges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the rights of the authorities of the state of Montana, or of any other interested party, to apply in the proper manner for a modification of our findings and order as to any specific intrastate fare or charge on the ground that the latter is not related to the interstate fares and charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

60 I. C. C.

No. 9808.

INDIANAPOLIS CHAMBER OF COMMERCE ET AL.

v.

CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, DIRECTOR GENERAL, ET AL.

Submitted September 13, 1920. Decided December 29, 1920.

1. Rates on cattle and hogs, in carloads, from points in certain defined territory in the state of Illinois to Indianapolis, Ind., found just and reasonable.
2. Relationship of interstate rates from said Illinois points to Indianapolis, on the one hand, and intrastate rates from the same points to Chicago, East St. Louis, and Peoria, Ill., on the other, found to result in undue prejudice to Indianapolis and undue preference of Chicago, East St. Louis, and Peoria.
3. Application of rule governing the assessment of charges on intrastate shipments of cattle and hogs, in mixed carloads, to Chicago, East St. Louis, and Peoria, different from that which is applied in connection with interstate shipments to Indianapolis, found to result in undue prejudice to Indianapolis and undue preference of Chicago, East St. Louis, and Peoria.
4. Undue prejudice ordered removed.

Myers, Gates & Ralston for complainants.

D. P. Connell, Kenneth F. Burgess, D. P. Williams, and N. S. Brown for defendants.

Clifford Thorne and Ralph Merriam for Illinois Live Stock Association; and *H. R. Park* for Chicago Live Stock Exchange, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

EASTMAN, Commissioner:

Prior to March 20, 1916, the general basis of live-stock rates in central territory was fifth class. On that date, following *Eastern Live-Stock Case*, 36 I. C. C., 675, the carriers established the mileage scale of rates therein found reasonable. This resulted in increased rates from points in Illinois to Indianapolis, Ind., without a corresponding increase in the intrastate rates from the same points to Chicago, East St. Louis, and Peoria, Ill., which had theretofore been

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on approximately the same basis as the interstate rates in central territory. In April, 1917, the intrastate rates in Illinois were increased 5 per cent under authority of the Public Utilities Commission of that state; on April 22, 1918, the interstate rates to Indianapolis were increased 15 per cent following our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 803; and on June 25, 1918, both the interstate and intrastate rates were increased 25 per cent, pursuant to General Order No. 28 of the Director General of Railroads. The subsequent increases under *Increased Rates, 1920*, 58 I. C. C., 220, are not here in issue; reference hereinafter to present rates, scales, or adjustments will be understood as meaning those in effect prior to the increases effected under that decision.

The complaint in this case, filed by and on behalf of live-stock interests at Indianapolis, as amended, attacks the adjustment, resulting from the changes effected on and after March 20, 1916, between the carload rates on cattle and hogs from points in Illinois on, south, and east of the line connecting Chicago with East St. Louis-St. Louis via the Atchison, Topeka & Santa Fe Railway from Chicago through Joliet and Streator to Pekin, including Peoria, and from Pekin via the east bank of the Illinois River to its confluence with the Mississippi River at or near Grafton, Ill., thence via the east bank of the Mississippi River to East St. Louis, including St. Louis, Mo., to Indianapolis, on the one hand, and to Chicago, East St. Louis, and Peoria, on the other, as unduly prejudicial to Indianapolis and unduly preferential of the other points named. It is also alleged that the rates to Indianapolis are unreasonable, but this allegation is not stressed. Complainants' principal contention is that, distance considered, the rates from the territory in question to Indianapolis and to the competing points named should be the same. The Public Utilities Commission of Illinois was notified by us of the complaint and of the hearing.

The subjoined table shows the present interstate scale in central territory on cattle and hogs, up to 800 miles; the present Illinois state scale for like distances; and the differences in the rates in favor of shipments within Illinois. To facilitate comparison, the Illinois scale beyond 20 miles is shown in blocks of 10 miles, the same as the central scale. It should be stated, however, that the Illinois scale is constructed on the basis of 5-mile blocks up to and including 200 miles, so that beyond 20 miles and up to 200 miles there is an intermediate rate which is appropriately shown in the table. Rates throughout this report are stated in cents per 100 pounds, except as otherwise noted, and where shown as applicable in central territory are for single-line hauls, the rates for two-line hauls being 2 cents higher. Single and double deck cars are referred to as "s. d." and "d. d.," respectively:

Distance.	Central scale.		Illinois scale.		Difference.		
	Cattle, also hogs d. d.	Hogs s. d.	Cattle.	Hogs s. d. or d. d.	Cattle.	Hogs s. d.	Hogs d. d.
Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
5 and less.....	8	9	6.5	6.5	1.5	2.5	1.5
10 and over 5.....	9	10.5	7.5	7.5	1.5	3	1.5
15 and over 10.....	9.5	11	8	8.5	1.5	2.5	1
20 and over 15.....	10	11.5	8	9	2	2.5	1
30 and over 20.....	10.5	13	8.5	9.5	2	2.5	1
40 and over 30.....	11.5	13	9	10	1.5	2	1.5
50 and over 40.....	12.5	14.5	9.5	11	2	2	1.5
60 and over 50.....	13	15	10	11.5	2.5	3	1
70 and over 60.....	14	16	10	12	2.5	2.5	.5
80 and over 70.....	14.5	16.5	10.5	12.5	2.5	2.5	.5
90 and over 80.....	15	17.5	10.5	12.5	2.5	2.5	.5
100 and over 90.....	15.5	18	11	13	3	3	1
110 and over 100.....	16.5	19	11	13.5	3	2.5	.5
120 and over 110.....	17.5	20	11.5	14	3	2.5	.5
130 and over 120.....	18	20.5	11.5	14.5	3	3	.5
140 and over 130.....	19	22	12	15	3	2.5	.5
150 and over 140.....	19	22	12	15.5	3	3	.5
160 and over 150.....	19.5	22.5	12.5	16	3.5	3.5	1
170 and over 160.....	20	23	13	16	4	4	1.5
180 and over 170.....	20	23	13	16	4.5	4	1.5
190 and over 180.....	20.5	23.5	13	16.5	4.5	4	1.5
200 and over 190.....	20.5	23.5	13.5	17	5	5	2
210 and over 200.....	21.5	24.5	14	17	5	5	2
220 and over 210.....	22	25.5	14	17.5	5	4.5	1.5
230 and over 220.....	22	25.5	14.5	18	5	5	2
240 and over 230.....	22.5	26	14.5	18	5.5	5	2
250 and over 240.....	22.5	26	15	18.5	5	5	2
260 and over 250.....	23	26.5	15	19	5	4.5	1.5
270 and over 260.....	23	26.5	15.5	19.5	5	4	1
280 and over 270.....	24	27.5	16	20	5.5	4	1
290 and over 280.....	24.5	28	16.5	20.5	5.5	5	2
300 and over 290.....	24.5	28	17	21	5	5	2
			17.5	21.5	5	6	2.5
			18	22	5	6.5	3
			18.5	22.5	5	7	3.5
			19	23	5	7.5	4
			19.5	23.5	5	8	4.5
			20	24	5	8.5	5
			20.5	24.5	5	9	5.5
			21	25	5	9.5	6
			21.5	25.5	5	10	6.5
			22	26	5	10.5	7
			22.5	26.5	5	11	7.5
			23	27	5	11.5	8
			23.5	27.5	5	12	8.5
			24	28	5	12.5	9
			24.5	28.5	5	13	9.5
			25	29	5	13.5	10
			25.5	29.5	5	14	10.5
			26	30	5	14.5	11
			26.5	30.5	5	15	11.5
			27	31	5	15.5	12
			27.5	31.5	5	16	12.5
			28	32	5	16.5	13
			28.5	32.5	5	17	13.5
			29	33	5	17.5	14
			29.5	33.5	5	18	14.5
			30	34	5	18.5	15
			30.5	34.5	5	19	15.5
			31	35	5	19.5	16
			31.5	35.5	5	20	16.5
			32	36	5	20.5	17
			32.5	36.5	5	21	17.5
			33	37	5	21.5	18
			33.5	37.5	5	22	18.5
			34	38	5	22.5	19
			34.5	38.5	5	23	19.5
			35	39	5	23.5	20
			35.5	39.5	5	24	20.5
			36	40	5	24.5	21
			36.5	40.5	5	25	21.5
			37	41	5	25.5	22
			37.5	41.5	5	26	22.5
			38	42	5	26.5	23
			38.5	42.5	5	27	23.5
			39	43	5	27.5	24
			39.5	43.5	5	28	24.5
			40	44	5	28.5	25
			40.5	44.5	5	29	25.5
			41	45	5	29.5	26
			41.5	45.5	5	30	26.5
			42	46	5	30.5	27
			42.5	46.5	5	31	27.5
			43	47	5	31.5	28
			43.5	47.5	5	32	28.5
			44	48	5	32.5	29
			44.5	48.5	5	33	29.5
			45	49	5	33.5	30
			45.5	49.5	5	34	30.5
			46	50	5	34.5	31
			46.5	50.5	5	35	31.5
			47	51	5	35.5	32
			47.5	51.5	5	36	32.5
			48	52	5	36.5	33
			48.5	52.5	5	37	33.5
			49	53	5	37.5	34
			49.5	53.5	5	38	34.5
			50	54	5	38.5	35
			50.5	54.5	5	39	35.5
			51	55	5	39.5	36
			51.5	55.5	5	40	36.5
			52	56	5	40.5	37
			52.5	56.5	5	41	37.5
			53	57	5	41.5	38
			53.5	57.5	5	42	38.5
			54	58	5	42.5	39
			54.5	58.5	5	43	39.5
			55	59	5	43.5	40
			55.5	59.5	5	44	40.5
			56	60	5	44.5	41
			56.5	60.5	5	45	41.5
			57	61	5	45.5	42
			57.5	61.5	5	46	42.5
			58	62	5	46.5	43
			58.5	62.5	5	47	43.5
			59	63	5	47.5	44
			59.5	63.5	5	48	44.5
			60	64	5	48.5	45
			60.5	64.5	5	49	45.5
			61	65	5	49.5	46
			61.5	65.5	5	50	46.5
			62	66	5	50.5	47
			62.5	66.5	5	51	47.5
			63	67	5	51.5	48
			63.5	67.5	5	52	48.5
			64	68	5	52.5	49
			64.5	68.5	5	53	49.5
			65	69	5	53.5	50
			65.5	69.5	5	54	50.5
			66	70	5	54.5	51
			66.5	70.5	5	55	51.5
			67	71	5	55.5	52
			67.5	71.5	5	56	52.5
			68	72	5	56.5	53
			68.5	72.5	5	57	53.5
			69	73	5	57.5	54
			69.5	73.5	5	58	54.5
			70	74	5	58.5	55
			70.5	74.5	5	59	55.5
			71	75	5	59.5	56
			71.5	75.5	5	60	56.5
			72	76	5	60.5	57
			72.5	76.5	5	61	57.5
			73	77	5	61.5	58
			73.5	77.5	5	62	58.5
			74	78	5	62.5	59
			74.5	78.5	5	63	59.5
			75	79	5	63.5	60
			75.5	79.5	5	64	60.5
			76	80	5	64.5	61
			76.5	80.5	5	65	61.5
			77	81	5	65.5	62
			77.5	81.5	5	66	62.5
			78	82	5	66.5	63
			78.5	82.5	5	67	63.5
			79	83	5	67.5	64
			79.5	83.5	5	68	64.5
			80	84	5	68.5	65
			80.5	84.5	5	69	65.5
			81	85	5	69.5	66
			81.5	85.5	5	70	66.5
			82	86	5	70.5	67
			82.5	86.5	5	71	67.5
			83	87	5	71.5	68
			83.5	87.5	5	72	68.5
			84	88	5	72.5	69
			84.5	88.5	5	73	69.5
			85	89	5	73.5	70
			85.5	89.5	5	74	70.5
			86	90	5	74.5	71
			86.5	90.5	5	75	71.5
			87	91	5	75.5	72
			87.5	91.5	5	76	72.5
			88	92	5	76.5	73
			88.5	92.5	5	77	73.5
			89	93	5	77.5	74
			89.5	93.5	5	78	74.5
			90	94	5	78.5	75
			90.5	94.5	5	79	75.5
			91	95	5	79.5	76
			91.5	95.5	5	80	76.5
			92	96	5	80.5	77
			92.5	96.5	5	81	77.5
			93	97	5	81.5	78
			93.5	97.5	5	82	78.5
			94	98	5	82.5	79
			94.5	98.5	5	83	79.5
			95	99	5	83.5	80
			95.5	99.5	5	84	80.5
			96	100	5	84.5	81
			96.5	100.5	5	85	81.5
			97	101	5	85.5	82
			97.5	101.5	5	86	82.5
			98	102	5	86.5	83
			98.5	102.5	5	87	83.5
			99	103	5	87.5	84
			99.5	103.5	5	88	84.5
			100	104	5	88.5	85
			100.5	104.5	5	89	85.5
			101	105	5	89.5	86
			101.5	105.5	5	90	86.5
			102	106	5	90.5	87
			102.5	106.5	5	91	87.5
			103	107	5	91.5	88
			103.5	107.5	5	92	88.5
			104	108	5	92.5	89
			104.5	108.5	5	93	89.5
			105	109	5	93.5	90
			105.5	109.5	5	94	90.5
			106	110	5	9	

somewhat more than 300 miles and to East St. Louis and Peoria somewhat less.

In support of the undue prejudice alleged, complainants submit the following comparisons of rates on hogs, s. d., from points in Illinois on the main line of the Big Four to East St. Louis and to Indianapolis:

To East St. Louis from—	Dis- tance.	Rate.	To Indianapolis from—	Dis- tance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
Vermillion.....	166	16.5	Pana.....	167	23
Paris.....	159	16	Tower Hill.....	161	23
Midland.....	158	16	Shelbyville.....	151	22.5
Conlogue.....	154	16	Middlesworth.....	147	22
Dudley.....	151	15.5	Windsor.....	140	22
Kansas.....	146	15.5	Gays.....	135	22
Ashmore.....	141	15.5	Mattoon.....	128	20.5
Embarrass.....	137	15	Loxa.....	122	20.5
Charleston.....	132	15	Embarrass.....	113	20
Loxa.....	128	15	Ashmore.....	109	19
Mattoon.....	122	14.5	Kansas.....	104	19
Gays.....	115	14.5	Dudley.....	99	18
Windsor.....	110	14	Conlogue.....	96	18
Middlesworth.....	103	14	Midland.....	92	18
Shelbyville.....	99	13.5	Paris.....	91	17.5
Tower Hill.....	89	13.5	Vermillion.....	84	17.5
Pana.....	83	13			

Vermillion is the nearest selected point to Indianapolis, Pana the most distant. It will be noted that the rate from Vermillion to Indianapolis for 84 miles exceeds the rate from the same point to East St. Louis, for practically twice the distance, by 1 cent. From Mattoon, a point approximately midway between Indianapolis and East St. Louis, the interstate rate to Indianapolis exceeds the state rate to East St. Louis by 6 cents. The state rates in this exhibit are somewhat below the Illinois scale. Similar differences exist in the rates from points on the Pittsburgh, Cincinnati, Chicago & St. Louis to Indianapolis and East St. Louis, and are found throughout the territory in question.

Indianapolis is one of the important live-stock markets of the country. Its receipts of hogs from all sources during the years 1916, 1917, and 1918 were, respectively, 2,575,611, 2,350,730, and 2,749,976. Its receipts of cattle in the same years were 405,069, 501,156, and 504,190. In 1918 only four other markets received more hogs than Indianapolis.

Complainants state that the increased receipts in 1918 over previous years were due chiefly to a larger movement of live stock by truck and wagon to Indianapolis from near-by points. In view of the fact that the production of live stock in tributary territory is estimated to have been about 30 per cent greater in 1918 than in 1917, they assert that the increased receipts at Indianapolis were far below what they should have been. This they attribute to the unfavor-

able rates from the Illinois territory to Indianapolis as compared with the corresponding rates to Illinois markets.

Live-stock dealers at Indianapolis testified that in years past they had solicited and built up a business from points in Illinois, that owing to unfavorable rates this business began to decline in 1916, and that it has progressively declined as the rates became more unfavorable to Indianapolis, with the result that the Illinois business has been greatly curtailed. Letters from Illinois shippers, located in the territory in question, to Indianapolis dealers were introduced, without objection, stating that while they had been in the habit of shipping to Indianapolis they were compelled to discontinue because of the unfavorable rate situation.

As illustrative of the rate disparity to the disadvantage of Indianapolis, the following comparison, offered by complainants, shows rates on cattle for two-line hauls to Chicago and to Indianapolis from points in Illinois for comparable distances:

To Chicago from—	Dis- tance.	Rate.	To Indianapolis from—	Dis- tance.	Rate.
	Miles.	Cents.		Miles.	Cents.
Paris.....	165	14.5	Niantic.....	165	20.5
Oliver.....	174	15	Illopolis.....	169	20.5
Marshall.....	181	15	Lansville.....	175	20.5
Hutsonville.....	200	16	Buffalo.....	178	20.5
Trimble.....	204	16	Dawson.....	181	20.5
Robinson.....	209	16	Curran.....	201	24.5
Duncanville.....	213	16	Bated.....	205	24.5
Flat Rock.....	217	16.5	Berlin.....	208	24.5
Alendale.....	245	17.5	Alexander.....	215	24.5
Shrods.....	259	18	Orleans.....	217	24.5
Keansburg.....	261	18	Bluffs.....	243	25.5
Crossville.....	278	18.5	Griggsville.....	267	25.5
			Maysville.....	260	25.5
			Barry.....	274	27

Complainants' witness stated that numerous exhibits of like purport could be presented.

Defendants admit that the present relationship between the state and interstate rates in question is unduly prejudicial to Indianapolis and complainants, and that these rates should be on the same basis mile for mile. They assert, however, that this undue prejudice is caused by unduly low rates within Illinois, and that the interstate rates are just and reasonable. They call attention to the fact that these rates were based upon our finding in *Eastern Live-Stock Case*, *supra*, and that the subsequent increases have been made as the result of our orders. They also submitted comparisons of the earnings on these live-stock rates, per car and per car-mile, based on the short-line distance of 238 miles, with the earnings on other representative

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commodities moving from East St. Louis to Indianapolis. The following are illustrative of these comparisons:

Commodity.	Earnings per car.	Earnings per car-mile.
Grain:		<i>Cents.</i>
Corn.....		
Oats.....		
Wheat.....		
Barley.....	\$79.59	33.42
Flour.....	85.09	35.71
Mill feed.....	78.02	31.52
Broom corn.....	111.52	46.86
Macaroni products.....	78.92	31.90
Potatoes.....	83.14	30.78
Beans, dried.....	100.09	42.31
Lumber and forest products.....	66.86	27.98
Corn oil.....	94.75	39.80
Petroleum and its products:		
Refined.....	99.76	41.91
Crude.....	109.17	45.87
Agricultural implements.....	58.88	24.70
Washing machines and wringers.....	95.74	40.22
Stock powders.....	111.89	46.88
Gunny and burlap bagging.....	189.24	86.69
Live stock:		
Cattle.....	51.66	21.70
Hogs, d. d.....	87.88	34.80
Hogs, s. d.....	48.55	18.80

These figures are based on the weights of actual shipments. In some instances the heavier loading of the commodities compared should be taken into consideration.

Defendants emphasize the special services rendered by the carriers in the transportation of live stock, including the furnishing of cattle cars and loading and feeding pens, the feeding and watering of stock en route, and the necessity of getting the stock to market within a certain time. They also state that practically every line in central territory is obliged to run special trains to pick up live stock at local points and haul it to a terminal, and that this is especially true of lines reaching Indianapolis. They call attention to the fact that the empty movement of stock cars is nearly 50 per cent of the total movement, and that with few exceptions the number of loaded stock cars hauled in any one year is proportionally less than that of cars assigned to any other commodity. They assert that in the transportation of other commodities the only comparable service rendered by the carriers is in connection with the carriage of perishable commodities requiring refrigeration, and that such articles take a much higher freight rate than live stock. Defendants further contend that, considering all the services rendered and the difficulties encountered in the transportation of live stock, the carriers receive an insufficient remuneration under the present interstate rates.

An exhibit offered by defendants shows the percentage relationship between the earnings of the carriers in central territory under the cattle and hog rates and the earnings on other commodities, also

the percentage relationship between the amount of equipment used in such transportation. For example, it is shown that the earnings produced by the rates on cattle and hogs s. d. are 56.36 and 45.90 per cent, respectively, of the earnings on grain; 63.26 and 51.52 per cent, respectively, of the earnings on flour, and practically the same percentage of the earnings on lumber; that the equipment used in the transportation of cattle and hogs s. d. is 440 and 590 per cent, respectively, of that used in the transportation of grain; 393 and 525 per cent, respectively, of that used in the transportation of flour; and 297 and 398 per cent of that used in hauling lumber.

As stated, the present interstate rates to Indianapolis are those prescribed in *Eastern Live-Stock Case*, *supra*, plus the subsequently authorized increases. In *Dimmitt-Caudle-Smith Live Stock Commission Co. v. R. R. Co.*, 47 I. C. C., 287, we prescribed a like scale of rates as maxima on this traffic from certain points in Missouri to East St. Louis and National Stock Yards, Ill. There is no evidence tending to show that the schedule of rates so prescribed, or that the subsequent increases in these rates were or are unreasonable as applied to the transportation of cattle and hogs from the territory in question to Indianapolis.

It was contended on behalf of the Illinois Live Stock Association, intervener herein, that the state rates in Illinois on cattle and hogs should be on a lower basis than the interstate rates to Indianapolis, on the theory that the density of both general and live-stock traffic is greater in Illinois than in Indiana. It was also argued that the disadvantage suffered by Indianapolis as a live-stock market in doing business in Illinois territory is not due to the rate adjustment but to the superiority which Chicago enjoys by being the greatest live-stock market in the country. It was asserted that Chicago receives more than nine times as many cattle and three times as many hogs as Indianapolis, and that competition is keener at the Chicago market by reason of the greater number of live-stock buyers, with the result that the prices of live stock at Chicago are higher on the average throughout the year than at the Indianapolis market. Freight service to Chicago is also claimed to be superior to that to Indianapolis, in that it is more expeditious and frequent. These are some of the considerations which, this intervener urges, tend to make Chicago a more attractive market to Illinois live-stock shippers than Indianapolis. However, any superiority which Chicago may have over Indianapolis as a live-stock market may not be urged as a reason for denying to Indianapolis a nonprejudicial adjustment of freight rates.

With respect to the density of live-stock traffic in Illinois as compared with Indiana, an exhibit was introduced on behalf of the
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intervener showing that the total mileage in Illinois of all lines serving Chicago is 9,127 miles; that these lines in 1918 delivered at Chicago 309,136 carloads of live stock of all kinds from all points of origin, both interstate and state, which shows that they hauled on the average 33.9 cars of live stock for each mile of railroad in Illinois serving Chicago; while the total mileage of all lines in Indiana serving Indianapolis is 3,121 miles, the total number of carloads of all kinds of live stock delivered by these lines in Indianapolis from all points of origin both interstate and state during 1918 was 44,262, with the resulting average of 14.18 cars of live stock hauled per mile of line in Indiana. It is, however, to be observed that the western lines, shown on this exhibit as serving Chicago, which haul the bulk of the live-stock traffic from the west to Chicago, pass through Illinois to the north and west of the originating territory involved in this case. If we confine the comparison with Indiana to the density of the live-stock traffic on those lines in Illinois serving Chicago directly from the Illinois territory here involved, a different result is obtained. For instance, the Chicago & Alton, the Chicago & Eastern Illinois, and the Illinois Central are shown to have a combined mileage in Illinois of 4,249 miles, and to have delivered at Chicago in 1918 from all points of origin 46,937 carloads of all kinds of live stock. This gives an average of approximately 11 carloads for each mile of these lines in Illinois. Moreover, the record shows that the bulk of the live-stock traffic from Illinois points to Chicago originates in territory to the north and northwest of that involved in this case.

A comparison between the live-stock production in Illinois and Indiana, based upon an exhibit introduced on behalf of the intervener, shows that on January 1, 1918, the total number of cattle and hogs on Illinois farms was 7,482,000; on Indiana farms, 5,638,000. Illinois has an area of 56,665 square miles; Indiana, 36,354 miles. Based on this exhibit, therefore, the number of cattle and hogs per square mile in Illinois was 132; in Indiana, 155. Another exhibit introduced on behalf of the interveners shows the total mileage of all lines in Illinois to be 12,143 miles; in Indiana, 7,475 miles. These respective mileages divided into the total number of cattle and hogs in the respective states would show that on the date above mentioned there were 616 head of cattle and hogs per mile of road in Illinois and 754 head per mile in Indiana.

Interveners also represent that shippers of live stock to Chicago are compelled to pay, in addition to the line-haul rates, a terminal charge of \$2 per car for the delivery of live stock at the stockyards in Chicago, and also an unloading charge of 25 cents per car, since increased to 50 cents, while to Indianapolis the line-haul rates in-

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clude delivery to the stockyards. Among the amendments to section 15 of the interstate commerce act enacted in the transportation act, 1920, is one providing that the unloading and reloading services at public stockyards shall be performed without extra charge to the shipper, consignee, or owner. Following this enactment the line-haul carriers at Chicago have absorbed these charges. *Live Stock Loading and Unloading Charges*, 58 I. C. C., 164.

In general, the arguments advanced by the interveners fail to take into account the fact that the alleged superiority of the Illinois markets, the keener competitive conditions at these markets, the greater traffic density in Illinois, may exist, certainly to some extent, because of the very condition which this complaint seeks to rectify, namely, the existence of a higher scale of rates mile for mile on live stock from Illinois to Indiana than exists intrastate in Illinois.

So far as disclosed by this record no such dissimilarity in the transportation and traffic conditions governing the movement of cattle and hogs from the Illinois territory in question to Chicago, East St. Louis, and Peoria, as compared with the movement from the same territory to Indianapolis, exists as to justify a lower basis of rates, distance considered, to the Illinois markets than to Indianapolis.

Complainants also call attention to a further incident of the Illinois state rates which contributes to the prejudice against Indianapolis. Under the mixed-carload rule in effect on interstate shipments of live stock to Indianapolis, charges are based on the carload rate applying to the highest-rated commodity and subject to the highest minimum weight attaching to any article in the load, while on Illinois intrastate traffic charges are based on the rate and minimum for that commodity which on a straight carload basis produces the highest charge. The minimum applicable to Illinois state shipments of cattle is 22,000 pounds, on hogs s. d. 17,000 pounds. The rate on cattle is lower than that on hogs. It was shown that on all mixed shipments of cattle and hogs weighing less than 18,000 pounds moving intrastate the application of the cattle rate and cattle minimum under the intrastate rule produces a higher charge and would therefore be applicable. Under the interstate rule a higher charge would result. The latter rule is the one in effect generally throughout official territory.

Following the recommendations of the examiner in the proposed report, to which no exceptions were filed, we are of the opinion and find that defendants' rates on cattle, on hogs in single-deck cars and on hogs in double-deck cars, in carloads, from points in Illinois, within the territory of origin defined in this report, to Indianapolis, under attack herein, as authorized to be increased under our report

and order in Ex Parte 74, *Increased Rates, 1900*, 58 I. C. C., 220, are, and for the future will be, just and reasonable.

We further find that the maintenance by defendants of lower intrastate rates on cattle and hogs, in carloads, for corresponding distances from points in said territory of origin to Chicago, East St. Louis, and Peoria results in undue prejudice to Indianapolis, and to persons there receiving cattle and hogs from said points of origin, in undue preference of Chicago, East St. Louis, and Peoria, and of persons there receiving cattle and hogs from said points of origin, and in unjust discrimination against interstate commerce.

We further find that, whether the aforesaid rates pertain to transportation of cattle and hogs in interstate or in intrastate commerce, the transportation services in each instance are performed by defendants under substantially similar circumstances and conditions.

We further find that said undue prejudices, undue preference, and unjust discrimination can and should be removed by making increases in said intrastate rates on cattle and hogs, in carloads, to the same basis, distance considered, as said interstate rates.

We further find that defendants should establish and maintain the following distance rates, which we find to be just and reasonable for the future, for the transportation of cattle, of hogs in single-deck cars, and of hogs in double-deck cars, in carloads, from said points of origin to Indianapolis, Chicago, East St. Louis, and Peoria. These rates are for single-line transportation—i. e., over one line of railroad, or two or more lines of railroad under the same management and control. Rates over two or more lines to be 3 cents per 100 pounds higher.

Distance.	Rate.		Distance.	Rate.	
	Cattle, also hogs, d. d.	Hogs, s. d.		Cattle, also hogs, d. d.	Hogs, s. d.
Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
5 and less.....	11	12.5	150 and over 140.....	30.5	30.5
10 and over 5.....	12.5	14.5	160 and over 150.....	27.5	31.5
15 and over 10.....	12.5	15.5	170 and over 160.....	26	33
20 and over 15.....	14	16	180 and over 170.....	26	33
30 and over 20.....	14.5	16.5	190 and over 180.....	28.5	33
40 and over 30.....	16	18.5	200 and over 190.....	28.5	33
50 and over 40.....	17.5	20	210 and over 200.....	30	34.5
60 and over 50.....	18	20.5	220 and over 210.....	31	35.5
70 and over 60.....	19.5	22.5	230 and over 220.....	31	35.5
80 and over 70.....	20.5	23.5	240 and over 230.....	31.5	36
90 and over 80.....	21	24	250 and over 240.....	31.5	36
100 and over 90.....	21.5	24.5	260 and over 250.....	32	37
110 and over 100.....	22	25.5	270 and over 260.....	32	37
120 and over 110.....	24.5	26	280 and over 270.....	33.5	38.5
130 and over 120.....	25	29	290 and over 280.....	34.5	39.5
140 and over 130.....	26.5	30.5	300 and over 290.....	34.5	39.5

We further find that defendants' rule governing the assessment of charges on cattle and hogs in mixed carloads from said points of origin to Indianapolis is, and for the future will be, just and reasonable.

We further find that the maintenance of a different rule, resulting in lower charges, governing the assessment of charges on cattle and hogs in mixed carloads from said points of origin to Chicago, East St. Louis, and Peoria, results in undue prejudice to Indianapolis, and to persons there receiving cattle and hogs from said points of origin, in undue preference of Chicago, East St. Louis, and Peoria, and of persons there receiving cattle and hogs from said points of origin, and in unjust discrimination against interstate commerce.

And we further find that said undue prejudice, undue preference, and unjust discrimination can and should be removed by the establishment and maintenance for the future by defendants of the present interstate rule for application to the transportation of cattle and hogs in mixed carloads from said points of origin to Indianapolis, Chicago, East St. Louis, and Peoria.

An appropriate order will be entered.

SO I. C. C.

No. 11830.

OHIO RATES, FARES, AND CHARGES.

IN THE MATTER OF PASSENGER AND PULLMAN FARES,
CHARGES FOR EXCESS BAGGAGE, AND RATES ON
MILK AND CREAM APPLICABLE BETWEEN POINTS IN
THE STATE OF OHIO.

Submitted December 13, 1920. Decided January 10, 1921.

Certain fares, charges, and rates required by state authority to be maintained by the respondents within the state of Ohio found to be lower than the corresponding interstate fares, charges, and rates authorized in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly prejudicial to intrastate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce.

John C. Bills, H. L. Bond, jr., W. S. Bronson, Clyde Brown, N. S. Brown, George F. Brownell, E. G. Buckland, D. P. Connell, R. V. Fletcher, Francis I. Gowen, D. P. Williams, James Stillwell, Squire, Sanders & Dempsey, Morison R. Waite, S. H. West, Wilson & Rector, and L. W. Blatterman for respondent carriers.

John G. Price and S. E. Corn for state of Ohio and Public Utilities Commission of Ohio.

A. S. Burket for Ohio Dairy Product Association.

John E. Benton for National Association of Railway and Utilities Commissioners.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The question in this proceeding is whether the passenger fares, excess-baggage charges, and rates on milk and cream,¹ imposed by Ohio state authorities, and at present applied to intrastate traffic by steam railroads in that state, are unlawful on account of their relation to the rates, fares, and charges applied by the same carriers with our sanction to similar traffic moving in interstate commerce.

In *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, we authorized substantial increases in the interstate rates, fares, and charges of railroads sub-

¹ The words "milk and cream," as used herein, will be understood to include butter-milk, cottage cheese, and similar products grouped therewith, in the carriers' tariffs.

ject to our jurisdiction throughout the country, which would, under the existing conditions, result in rates, fares, and charges—

not unreasonable in the aggregate under section 1 of the act, and would enable the carriers * * *, under honest, efficient, and economical management, and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

It is not necessary for the purposes of this report to state the increases permitted in charges for freight services. The increases permitted in passenger fares and excess-baggage charges were 20 per cent, and on passengers in sleeping and parlor cars a surcharge amounting to 50 per cent of the charge for space in such cars was authorized to be collected in connection with the charge for space, and to accrue to the rail carriers. An increase of 20 per cent in the rates on milk and cream carried on passenger trains was also authorized. The new and increased rates, fares, and charges were established by the carriers interstate, effective August 26, 1920. They apply on foreign as well as interstate traffic.

At the time of the decision in *Increased Rates, 1920, supra*, the steam railroads operating in the state of Ohio had pending before the Public Utilities Commission of Ohio an application for increases in their intrastate rates, fares, and charges commensurate with the increases allowed by us. In a report issued August 17, 1920, the Ohio commission permitted such increases in the charges for freight services. However, it denied increases in intrastate passenger fares, which at that time were on the same basis per mile as interstate fares, and stated its inability to authorize a surcharge on passengers in sleeping and parlor cars, holding that it had no jurisdiction to authorize charges for passenger transportation in excess of the existing fares of 3 cents per mile, prescribed by the state legislature.* The Ohio authorities also declined to authorize increases in excess-baggage charges, on the ground that, being based on the usual percentage of passenger fares, they were so interrelated to such fares, as to make any changes impracticable for want of jurisdiction. It declined to allow any increases in the rates on milk and cream, and subsequently went further and required a reduction. In *C. F. A. Territory Milk and Cream Rates*, 46 I. C. C., 601, we fixed a reasonable scale of interstate rates on milk and cream carried on passenger trains between points in central freight association territory

* An Ohio statute enacted in 1876 provided a 3-cent fare, and that basis was maintained until 1906 when it was reduced by statute to 2 cents. The 2-cent basis continued in force until June 10, 1918, when the Director General of Railroads made the standard fare 3 cents, which was also the basis for interstate fares. In January, 1920, the Ohio legislature made the statutory fare 3 cents.

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and from certain points south of the Ohio River to Cincinnati, Ohio, making the rates on cream uniformly 25 per cent higher than on milk. The Ohio commission subsequently, in January, 1918, adopted for milk the same rates that we had prescribed on milk interstate, but it required cream to be put on the milk basis, thus making the intrastate rates on cream at that time 20 per cent less than the interstate rates. On June 25, 1918, the Director General of Railroads increased rates on milk and cream, both state and interstate, 25 per cent in accordance with his general order No. 28, and in February, 1920, he increased the Ohio intrastate rates on cream to the interstate basis. On September 20, 1920, the Ohio commission by a special order required the rates on cream reduced to the basis applied intrastate on milk. This reduction, amounting to 20 per cent, became effective October 1, 1920. At present, therefore, interstate rates on milk are 20 per cent higher than the intrastate rates, while the interstate rates on cream are about 50 per cent higher than the intrastate rates.

Computed on the basis of the traffic which moved during the year ended June 30, 1920, the increases denied by the Ohio authorities would mean a direct loss to the carriers of about \$4,600,000. Stated otherwise, if the same traffic should move during the year beginning August 26, 1920, as moved during the year ended June 30, 1920, the intrastate revenue in Ohio will be about \$4,600,000 less than if the Ohio commission had authorized rates and fares equal to those authorized by us.

A large majority of the trains moving in Ohio carry both intrastate and interstate traffic. The service is of the same character in every respect. An interstate passenger traveling at 3.6 cents per mile may have at his side in the same seat an intrastate passenger paying 3 cents per mile. If they are in a sleeping car or parlor car the interstate passenger, for the privilege of riding in that car, pays the railroad in addition to his regular passenger fare a surcharge equal to 50 per cent of his sleeping-car or parlor-car fare, while the intrastate passenger pays the railroad only his regular fare. A piece of baggage or a can of milk or cream moving interstate may be carried in the same car with intrastate shipments of the same kind moving at a much lower charge for an equal distance.

Cities and persons in Ohio are in numerous ways in competition with cities and persons in adjacent states. Detroit, Mich., Buffalo, N. Y., Erie and Pittsburgh, Pa., Wheeling, Huntington, and Charleston, W. Va., Indianapolis, Richmond, Muncie, and Fort Wayne, Ind., and numerous other points in the states named are embraced within the same general zone of industrial and commercial activity as points in the state of Ohio, and they are directly and indirectly affected by

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any differences in transportation charges in favor of Ohio intrastate traffic. Any difference in transportation charges in favor of Ohio intrastate traffic is of detriment to such cities and persons outside the state. The effects of the disparities may be slight and not always readily discernible, but they nevertheless exist. The difference in the passenger-fare basis against interstate traffic is 0.6 cent per mile, and when other considerations are equal it will naturally tend to influence persons in Ohio seeking markets in which to trade to confine themselves to Ohio.

From almost any point in Ohio to almost any point outside the state the through fares, which are based on 3.6 cents per mile, may be defeated by a passenger purchasing a ticket on the basis of 3 cents per mile to an Ohio point near the state line, leaving the train, purchasing a ticket on the basis of the interstate fare beyond, and then resuming his journey on the same train. The practice of this device is quite common where the intrastate fare is on a lower basis than the interstate fare, and the practice grows as the public realizes that substantial savings can be thus effected. It delays interstate trains and is otherwise injurious to interstate commerce. It increases intrastate travel and reduces interstate travel and has been known to compel carriers to reduce the through interstate fares to the level of fares fixed by state authority. The fact that some persons are aware of the method by which the through fare can be defeated, while others are not, results in the former traveling at a less charge than others under substantially similar conditions. It may be observed in this connection that elderly people, invalids, women, children, persons in charge of such persons, and those having baggage to check are at a disadvantage in availing themselves of this device because it is usually impracticable for them to purchase a new ticket.

Between two given points in Ohio, where one road is intrastate and a competing road interstate, the interstate carrier must either reduce its fare to the intrastate basis or lose much of its traffic. The practical result in such a situation is to defeat the increase we have found justified in interstate fares.

There is evidence to the effect that it costs relatively more to handle intrastate passenger traffic than interstate passenger traffic, mainly because the terminal costs on the relatively shorter hauls in intrastate traffic constitute a greater proportion of the total costs of the through or complete service than they do on long-haul interstate traffic, the number of short hauls on intrastate traffic being relatively greater than on interstate traffic.

When the Ohio intrastate rate is lower than the interstate rate, a point like Cleveland, Ohio, can draw its supply of milk and cream from Ohio points at much less charge than Pittsburgh pays for equal

distances and under similar circumstances, from the same territory. Ice cream made at Cleveland from milk and cream drawn from this common territory may enter into competition with that made at Pittsburgh from milk and cream of the same origin. Again, a producer of milk in Ohio can ship his milk to Cincinnati at a lower charge than his competitor in Indiana pays for an equal haul to the same point under similar conditions.

The above illustrations are given merely as examples of the general prejudicial results of the present disparities between intrastate and interstate rates. The record affords other instances. They are not justified by any differences in transportation conditions.

The Ohio commission offered some evidence respecting the transportation of milk and cream. About 90 per cent of the traffic is intrastate. Milk and cream are transported under substantially like circumstances and conditions, except that cream is much more valuable. While the amounts paid out by the carriers in claims for loss and damage may not be so materially greater on cream than on milk as to warrant any substantial difference in rates, the fact remains that the value of the service is greater and, in accordance with established principles of rate making, cream should be charged higher rates than milk. We find nothing in the record that convinces us that we erred in prescribing the milk-and-cream scale above referred to. It was determined upon after an extensive investigation.

Except for the special fares hereinafter referred to, the record establishes that the intrastate rates, fares, and charges in question are maintained at generally lower levels than those found reasonable by us for interstate application in *Increased Rates, 1920* and *Authority to Increase Rates, supra*, and that there is no difference in circumstances and conditions of transportation to warrant the disparities.

In all essential respects the facts in this case are similar to those in *Intrastate Rates within Illinois*, 59 I. C. C., 350, where we ordered intrastate passenger fares in Illinois increased to and maintained at the interstate basis. See also *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, and *Wisconsin Passenger Fares*, 59 I. C. C., 391, where a like requirement was made.

At the hearing it was stated on behalf of the Ohio commission that it was not its purpose to deny increases in commutation fares, and upon argument the carriers advised us that such fares had been recently increased 20 per cent. Therefore our conclusions herein will not relate to commutation fares. We shall also exclude excursion, convention, and other fares for special occasions, multiple-form-ticket fares, extra fares on limited trains, and club-car charges, there being no evidence as to these matters.

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Upon consideration of the record, subject to the exceptions above noted, we are of the opinion and find that the increases made by the respondent steam railroads under Ex Parte 74, relating to passenger fares and baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Ohio has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges, in undue prejudice to persons traveling in interstate commerce within the state of Ohio and between points in the state of Ohio and points in other states, in undue preference of and advantage to persons traveling intrastate in Ohio, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares and excess-baggage charges.

We further find that the surcharges made by said respondent steam railroads under Ex Parte 74 upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce in the group considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Ohio has resulted and will result in intrastate charges lower than the corresponding interstate charges, in undue prejudice to persons so traveling in interstate commerce within the state of Ohio and between points in the state of Ohio and points in other states, in undue preference of and advantage to persons so traveling intrastate in Ohio, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid upon passengers so traveling in interstate commerce.

We further find that the increases made by the carriers under Ex Parte 74, relating to rates on milk and cream, and now in effect, result in reasonable rates on milk and cream for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Ohio to increase the intra-

state rates on milk and cream in effect September 30, 1920, correspondingly, and to maintain that basis, has resulted in the past and will result in intrastate rates lower than the corresponding interstate rates, in undue prejudice to shippers of milk and cream in interstate commerce within the state of Ohio and between points in the state of Ohio and points in other states, in undue preference and advantage to shippers of milk and cream in intrastate commerce in Ohio, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination can and should be removed by making increases in intrastate rates in effect September 30, 1920, on milk and cream, which shall correspond with the increases heretofore made as aforesaid in the rates on milk and cream shipped in interstate commerce.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, or surcharges, or rates on milk and cream pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the authorities of the state of Ohio or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fares or charges on the ground that the latter are not related to the interstate fares or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

60 I. C. C.

No. 8479.

AMERICAN FORK & HOE COMPANY ET AL.

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted October 7, 1920. Decided December 8, 1920.

On further consideration of the entire record, 53 I. C. C., 245, rates on handle material, not further finished than sawed or turned to shape, in carloads, from Blytheville, Ark., to Thebes, Ill., and certain other destinations, found to have been unreasonable. Reparation awarded.

W. W. Collin, jr., for complainants.

M. G. Roberts for St. Louis & San Francisco Railroad Company.

John F. Finerty for Director General of Railroads.

Parker McCollester for central freight association and trunk line carriers.

SUPPLEMENTAL REPORT OF THE COMMISSION ON REARGUMENT.

MEYER, Commissioner:

By complaint filed November 29, 1915, the American Fork & Hoe Company, the Union Fork & Hoe Company, and the National Handle Company allege that the rates on "handle material in the rough, sawed or turned to shape, not further finished," in carloads, from Blytheville, Ark., to Memphis, Tenn., Thebes, Ill., St. Louis, Mo., Fort Madison, Iowa, Fort Wayne, Ind., Jackson, Mich., Columbus, Ashtabula, and Geneva, Ohio, Binghamton, N. Y., and Philadelphia, Pa., were and are unreasonable, unjustly discriminatory, and unduly prejudicial. They ask for the establishment of just and reasonable rates and seek reparation for unlawful charges paid on and after December 1, 1915. On March 10, 1919, supplemental complaint was filed making the Director General of Railroads a party. By answer the Director General waived further hearing upon condition that general order No. 28 be treated as a part of the record, and consented that the evidence theretofore submitted in this cause be considered by us in so far as it is relevant and material.

In our original report herein, 53 I. C. C., 245, we found that the rates assailed were unduly prejudicial to the extent that they exceeded the rates on lumber from and to the same points and denied reparation, following *Rates on Lumber and Lumber Products*, 52 I. C. C., 598. Rates on the handle material were established, effective I. C. C.

tive September 10, 1919, in compliance with our order, upon the same basis as the existing lumber rates. The question of reasonableness was not considered in the original report.

Reargument was heard upon complainants' petition for specific findings with respect to the allegation of unreasonableness. Since the present rates are upon the basis sought by them there remains for consideration only the reasonableness of the rates charged prior to September 10, 1919, and the question of reparation for unlawful charges paid on shipments moving between December 1, 1915, and September 10, 1919. At the argument they further confined the issue to the local and proportional rates from Blytheville to Memphis, Thebes, and St. Louis, which were 3 cents higher than the rates on lumber.

The mill at Blytheville manufactures round, or turned, handle material, which is described on page 246 of the original report herein. The round material loads heavier than the square material, and the shipments made during the year ending November 30, 1915, averaged 40,289 pounds, which average was lighter than usual. The movement of the shipments was usually over the St. Louis & San Francisco Railroad direct to Memphis and through Thebes, and connecting lines beyond to central and trunk line territories, and through St. Louis to Fort Madison.

The rates stated herein are in cents per 100 pounds and are those which were in effect prior to June 25, 1918, unless otherwise specified. The applicable rates on the round handle material and the rates on lumber during the reparation period are shown in the following table:

Rates on handle material, not further finished than sawed or turned to shape, designated as rounds, minimum 3½,000 pounds, and on lumber.

From Blytheville, Ark., to—	Distance.	Rates.					
		Dec. 1, 1915, to June 24, 1918, inclusive. ¹		June 25, 1918, to Aug. 19, 1918, inclusive.		Aug. 20, 1918, to Sept. 9, 1919, inclusive.	
		Rounds.	Lumber.	Rounds.	Lumber.	Rounds.	Lumber.
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Memphis, Tenn.....	68	11	8	13	10	13	10
Ashtabula, Ohio.....	780	28.8	25.8	37.5	34	35	32
Columbus, Ohio.....	599	26.7	23.7	34.5	31	33	30
Fort Wayne, Ind.....	536	25.7	22.7	33.5	30	32	29
Geneva, Ohio.....	771	28.8	25.8	37.5	34	35	32
Jackson, Mich.....	656	26.7	23.7	34.5	31	33	30
Binghamton, N. Y.....	1,059	33.5	32.9	42.5	41.5	43	39
Philadelphia, Pa.....	1,138	41.6	35.4	57.5	44	58	41.5
Fort Madison, Iowa.....	438	28.5	19.5	28.5	24.5	29.5	24.5

¹ These rates were increased 1 cent on May 15, 1918, except to Memphis, Fort Madison, Binghamton, and Philadelphia.

² Increased to 42 cents Apr. 18, 1918.

³ Increased to 33.9 cents Apr. 18, 1918.

⁴ Effective Feb. 15, 1919.

⁵ Increased to 46 cents Apr. 18, 1918.

⁶ Increased to 36.4 cents Apr. 18, 1918.

⁷ Effective Jan. 15, 1919, and reduced to 25.5 cents effective Sept. 10, 1919.

From the above table it will be noted that the rates on the round handle material were uniformly 3 cents higher than on lumber, including lumber of the same material, to the points in central freight association territory. The 3-cent differential accrued to the initial line for the haul from Blytheville to river crossings, whereas the central freight association lines accorded the round handle material the same rates as lumber.

The assessment of rates on turned handle material 3 cents higher than on lumber was unusual in this territory. In our original report herein we said—

a study of tariffs undertaken in connection with *Rates on Lumber and Lumber Products*, 52 I. C. C., 598, discloses that, of 144 tariff items naming rates on handle material in the tariffs examined, 101 items name lumber rates, 10 lumber rates plus 1 cent, 19 lumber rates plus 3 cents, and 14 special rates made without fixed relation to lumber rates.

The initial line itself maintained rates on turned handle material from points on its line in Mississippi and Alabama, the same as on lumber. From certain points east of the Mississippi River in Alabama, Mississippi, Tennessee, and Kentucky to points in central territory turned handle material was accorded lumber rates, and to Fort Madison 1 cent higher than on lumber.

The rates on lumber from Blytheville to the river crossings, and when destined beyond, were also accorded many lumber articles, such as box lumber and shooks, flooring, sawed handle material, lath, molding, fence posts, sawdust, shavings, club-turned spokes, and rough sawed agricultural-implement wood; and rates only 3 cents higher than lumber were maintained on other lumber articles which are of greater value, load lighter, and have reached a further stage of manufacture than round handle material, such as blinds, glazed and panel doors, door and window frames set up, dressed and mortised agricultural-implement wood and built-up wood veneer. Complainants show that the average value per car of the round handle material, \$972.82, was also lower than the average of other lumber articles which were and are accorded lumber rates, such as club-turned spokes, \$972.10; oak flooring, \$2,000 to \$2,380; barrel shooks, \$2,500 to \$3,000; and sucker rods for oil wells, \$2,400.

The local or proportional rates from Blytheville to the river crossings, together with complainants' comparisons of the earnings per car-mile and ton-mile under the factors of the rates assailed with the earnings under the corresponding factors of the rates on lumber and articles taking lumber rates are shown in the following table:

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From Blytheville, Ark., to—	Distance.	Rate.	Earnings.	
			Per ton-mile.	Per car-mile.
	Miles.	Cents.	Mills.	Cents. ¹
Memphis, Tenn.....	70			
Turned handle material.....		11	31.4	63.3
Lumber articles.....		8	22.9	46.
Thebes, Ill.....	107			
Turned handle material.....		12	22.4	45.7
Lumber articles.....		9	16.8	33.9
St. Louis, Mo.....	235			
Turned handle material.....		15	12.8	25.7
Lumber articles.....		12	10.2	20.8
Average.....	137			
Turned handle material.....		12.66	18.5	37.4
Lumber articles.....		9.66	14.1	28.6

¹ Based upon the average weight of complainants' shipments, 40,289 pounds, and applied to lumber articles.

The above average ton-mile earnings of 18.5 mills, 137 miles, upon turned handle material were practically double the average of 9.41 mills, 174 miles, upon all freight of the initial line during the year ended June 30, 1915; and more than triple the average of 5.59 mills, 186 miles, upon all freight of seven representative lines in central territory during the same period.

The above average earnings of 14.1 mills per ton-mile under the rates on lumber articles, including square handle material, were high as compared with the averages above upon all freight.

The rate of 11 cents on handle material from Blytheville to Memphis, 68 miles, was higher, distance considered, than the rate of 11 cents on lumber from Pine Bluff to Memphis, 137.3 miles, prescribed in *Sawyer & Austin Lumber Co. v. St. L., I. M. & S. Ry. Co.*, 21 I. C. C., 464. See *Rates on Lumber from Southern Points*, 34 I. C. C., 652, 662.

In *Lumber from Arkansas City, Ark.*, 43 I. C. C., 423, we approved increases in the rates on hardwood lumber from Arkansas City to Memphis of from 8.75 cents to 9.75 cents, 157 miles; to Thebes, from 11 to 13 cents, 316 miles; and to St. Louis, from 13 to 14.5 cents, 420 miles. Those increased rates were considerably lower, distance considered, than the rates on handle material or on lumber from Blytheville to Memphis, Thebes, and St. Louis.

Other comparisons drawn by complainants show that ³/₃₃ rates on turned handle material from Blytheville were higher, distance considered, than the rate on lumber, including lumber of the same material, and agricultural-implement wood from points in Louisiana, Mississippi, Alabama, Tennessee, and Kentucky to the same destinations, as shown in the following table:

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To Ashtabula from—	Distance.	Rates on turned handle material.	Rates on lumber and agricultural implement wood.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Blytheville.....	780	23.8	.....
New Orleans.....	1,144	.....	30.8
Durant, Miss.....	923	.....	29.5
Corinth, Miss.....	788	.....	25.8
Millington, Tenn.....	769	.....	23.8
Memphis, Tenn.....	860	23.8	23.8

¹ Reshipping rate 22.8 cents.

The lumber rates above apply on "Wood, Agricultural implement, in the rough or in the white, including primed," which description embraces handle material for agricultural implements.

Prior to July 1, 1915, the rates on turned handle material from Blytheville to the western termini of trunk line territory were the same as the rates on lumber, some of which were lower than those in effect from Blytheville to Ashtabula and Geneva, intermediate points via certain routes. Other illustrations of departures from the long-and-short-haul provision of section 4 of the act, which were due principally to the 3-cent differential over lumber, are pointed out by complainants: The rate of 12.5 cents effective October 1, 1916, on turned handle material from Memphis to St. Louis was applicable by way of Blytheville, an intermediate point, from which the rate to St. Louis was 15 cents; the proportional rate of 11 cents from Memphis to Thebes was lower than the local and proportional rate of 12 cents from Blytheville to Thebes.

Upon consideration of the record we find that the rates assailed were unjust and unreasonable to the extent that the local rate to Memphis and the factors from Blytheville to Thebes and St. Louis exceeded the following rates, which were the rates on lumber, during the periods indicated:

	To Memphis.	To Thebes.	To St. Louis.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
From Blytheville:			
December 1, 1915, to June 24, 1916, inclusive.....	8	9	12
June 25, 1916, to September 8, 1916, inclusive.....	10	11.5	15

These rates are adjusted in compliance with the Director General's waiver, hereinbefore referred to, to show increases under general order No. 28.

We further find that complainants made the shipments as described in the record and paid and bore the charges thereon; that they were damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein

found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice, and details of shipments made subsequent to the hearing may be included in the reparation statement filed thereunder if accompanied by appropriate proof in the form of an affidavit that the shipments were made and the freight charges thereon were paid and borne by complainants. It is, of course, understood that if defendants object to proof in the form of an affidavit they may request a further hearing with respect to the subject matter thereof.

HALL, Commissioner, dissenting:

I was unable to concur in the original report and find even greater difficulty with this. The facts there stated and comparisons made fall far short of establishing either unreasonableness or right to reparation. In the original report it was found that the record would not support an award of reparation. This record was made up on July 17, 1916, and remains unchanged, although there has been reargument.

Upon that record the majority now find that the rates were unreasonable from December 1, 1915, to September 10, 1919, that complainants made shipments "as described in the record," paid and bore charges thereon, were damaged, and are entitled to reparation. As to shipments which moved after July 17, 1916, date of the hearing, there is no record to support these findings and they consequently rest upon no basis of evidence.

The award includes reparation against the Director General, as Agent, although federal control began more than 17 months after the record was closed. The case was argued in January, 1918. More than a year later, on March 10, 1919, we permitted a supplemental complaint against the Director General to be filed. His answer, filed April 8, 1919, contained the usual averment as to his general order No. 28, the usual denials, and a consent reading as follows:

Complainants having expressed their desire to submit this case without further hearing of evidence, the respondent does not demand further hearing, provided that complainants agree said Order No. 28 and the findings and certificate aforesaid, being a part thereof, shall be treated as a part of the record and shall have the same force and effect as if formally introduced in evidence, and that the rates complained of have been established pursuant to and in accordance with said order, and with that provision consents that the evidence heretofore submitted may be considered by the Commission, but only in so far as the same is relevant and material to the determination of the questions now properly at issue.

The case was submitted April 16 and decided May 5, 1919. The finding that complainants are entitled to reparation includes shipments made thereafter and prior to September 10, 1919, as well as

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all shipments made theretofore during the period of federal control, without any evidence of movement, payment, injury, or damage, except such as may hereafter be forthcoming in the form of an affidavit. A present finding can not be based on future proof, even if an affidavit were to be treated by us as proof of matters on which complainants bear the burden and defendants have the right to cross-examine. Nor is this cured by the opportunity extended to defendants to request a further hearing if they object to proof by affidavit. The burden is on complainants. Such laxity offends the principles underlying all rules of evidence and as a practice would tend to foster the rebating and kindred evils which it was the primary object of the statute to uproot and destroy. In the face of such facts as these I am unable to see how an award of reparation against the Director General, as Agent, or against the other defendants on shipments not covered by the record which was closed July 17, 1916, can be justified or sustained.

I am authorized by COMMISSIONERS DANIELS, FORD, and POTTER to say that they concur in this dissent.

60 I. C. C.

No. 11703.

IN THE MATTER OF INTRASTATE RATES WITHIN THE
STATE OF ILLINOIS.

Submitted December 14, 1920. Decided January 11, 1921.

Certain rates and charges, for freight services and transportation of milk and cream, required by state authority to be maintained by the respondent carriers within the state of Illinois, found to be lower than the corresponding rates and charges authorized in Ex Parte 74, *Increased Rates, 1920*, 58 I. C. C., 220 and 802, and to be unduly preferential of intrastate traffic and shippers and of localities within the state, unduly prejudicial to interstate traffic and shippers and to localities outside the state, and unduly, unjustly, and unreasonably to discriminate against interstate commerce.

Appearances shown in previous report, 59 I. C. C., 350.

SUPPLEMENTAL REPORT OF THE COMMISSION.

McCHORD, *Commissioner*:

The question here is with respect to the charges for freight services and for the transportation of milk and cream intrastate in Illinois as compared with the charges applied by the Illinois carriers to shipments moving in interstate and foreign commerce. The like question as to passenger fares has been in part disposed of in an earlier report, *Intrastate Rates within Illinois*, 59 I. C. C., 350, and will be further considered in another supplemental report.

In Ex Parte 74, *Increased Rates, 1920*, 58 I. C. C., 220, decided July 29, 1920, this Commission, under authority conferred upon it by the interstate commerce act, divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific. We found, subject to a few minor qualifications, that for freight services the carriers might increase their charges 40 per cent in the eastern group, 25 per cent in the southern group, 35 per cent in the western group, 25 per cent in the mountain-Pacific group, and 33½ per cent between groups in cases where joint or single-line through rates applied. For other than freight services we prescribed uniform increases for the entire country. We held that excess-baggage rates might be increased 20 per cent, provided that where stated as a percentage of or dependent upon passenger fares the increase in the latter would automatically effect the increase in the excess-baggage charges. On milk and cream, which are usually carried in passenger trains and the revenue from which is not included in freight revenue,

we authorized an increase in rates of 20 per cent. It was our conclusion that these various increases would result in transportation charges "not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of $5\frac{1}{2}$ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition." The increased rates and charges were put into effect, interstate, August 26, 1920.

After our decision was announced some question arose as to what increase in charges for freight services was intended for what has long been known as the Illinois district, which includes the state of Illinois and certain adjacent territory.¹ The uncertainty grew out of the fact that the boundary line we had drawn between the eastern and the western groups cut the Illinois district in two, as it extended from the mouth of the Illinois River at or near Grafton, Ill., thence via the Illinois River to Pekin, Ill., and thence south and east of the Atchison, Topeka & Santa Fe Railway from Pekin through Joliet and Streator to Chicago, Ill. This line appeared to us to represent in a general way the western termini of lines in the eastern district. Upon request for a definite announcement, the question as to what increase should apply in the Illinois district was given special consideration. In a supplemental report, *Authority to Increase Rates*, 58 I. C. C., 302, August 11, 1920, we held that the Illinois district should be considered as within the eastern group for the purposes of applying the increases on interstate traffic between points in that district and on traffic between points in the Illinois district on the one hand and points in official classification territory east of the Indiana-Illinois state line on the other, and that increases of 40 per cent might be made in the rates and that points within the Illinois district should be treated as in the western group on traffic subject to joint or single-line through rates between points in that district on the one hand and points lying within the boundaries of the western group (west or north of the Illinois district) on the

¹ Points in the Chicago switching district in Indiana; points in Wisconsin on and south of the Chicago, Milwaukee & St. Paul Railway, Milwaukee to Madison, the Chicago & North Western Railway, Madison to Dodgeville, and on and east of the Illinois Central, Dodgeville to the Illinois state line; also points on the west bank of the Mississippi River to which joint through rates subject to the official classification are now in effect from points in trunk line and central territories.

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other, and that increases of 35 per cent might be made in the rates on such traffic. In other words, we held that these increases would be necessary to yield the prescribed return for the carriers concerned.

The increases for the Illinois district were not to be applied to the rate structure in that district as it existed at the time our decisions were announced, but certain preliminary readjustments were expected, which we shall proceed to explain. Until early in 1920 the rates in effect throughout the Illinois district were in general those which had been prescribed or allowed by the Public Utilities Commission of Illinois for intrastate traffic, plus the increases provided by General Order No. 28 of the Director General of Railroads, effective June 25, 1918. The class rates, which were governed by the so-called Illinois classification, upon the whole were perhaps 15 or 20 per cent lower than those applied in what is known as central territory, embracing generally Indiana, Ohio, Michigan, and points in western New York, Pennsylvania, and West Virginia; and when considered in connection with the lower ratings in the Illinois classification than those obtaining in the official classification the actual rates charged in the Illinois district were perhaps 36 per cent lower than in central territory. The commodity rates also, in Illinois district, upon the whole appeared relatively lower than in central territory. In *Illinois Classification*, 55 I. C. C., 290; 56 I. C. C., 202 and 687, a proceeding instituted by us at the request of the Director General to determine what classification and what scale of class and commodity rates would be proper for the Illinois district to remove alleged undue prejudice to Indiana and its shippers, we recommended that the district be divided by a line drawn along the Illinois River from its junction with the Mississippi to Pekin, Ill., and thence via the line of the Atchison, Topeka & Santa Fe Railway through Joliet and Streator to Chicago, Ill., which was substantially the line later used in connection with the grouping of the country, as above referred to, for the purposes of *Increased Rates, 1920, supra*; that the Illinois classification and the Illinois district scale of class rates be canceled and that south of the line above described the official classification and the central territory scale of class rates, referred to in the report as the Disque scale, be applied; that north of said line the western classification and some scale of class rates that would harmonize with the rates in Iowa and Wisconsin be adopted; that the latter classification and scale be used from the section north of the line to the section south of the line; and that from the section south of the line to the section north of the line the official classification and the central territory scale be applied. As to most commodity rates no changes were recommended, for the reason that the record

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then before us did not warrant a definite conclusion that the lower basis in Illinois was actually injurious or prejudicial to Indiana within the meaning of section 3 of the interstate commerce act.

In February, 1920, the carriers put our recommendations into effect so far as they related to the establishment of the official classification and the central territory scale of rates in the southern section and from the southern to the northern section; but they made no change in the rates in the northern section or from that section to the southern section, for the reason that an appropriate scale had not been devised and agreed upon by the parties in interest. A number of conferences were had between representatives of the Illinois commission, shippers and carriers, and this Commission, and a formal hearing was held by the Illinois commission. Finally, a compromise scale of 10 classes, for application throughout the Illinois district on both state and interstate traffic, was agreed to by the principal parties concerned. The compromise scale was the same as the central territory scale on the first five classes, while the five lower classes were graded down in accordance with fixed percentages of first class. The entire scale was to be governed by a new Illinois classification acceptable to all parties. This new classification is understood to conform to the official classification, except where the competition from the west that was met by Illinois distributors has made it desirable to use the ratings provided in western classification, in which case the western classification ratings have been adopted for the entire Illinois district. On many important articles of traffic this classification affords Illinois shippers lower ratings than apply generally east of the Mississippi River. In a letter dated June 17, 1920, to the parties in the case referred to, we sanctioned the establishment of this basis instead of that we had formally recommended, and it received the sanction of the Illinois commission August 3, 1920. The new class rates on this basis were put into effect August 25, 1920. In the northern section of the Illinois district this meant an average increase of perhaps 16 per cent; in the southern section there were some comparatively unimportant reductions on the lower classes. It was understood when these rates were authorized that they would be the basis upon which such general increases as might later be allowed by both commissions would be built.

In the meantime the carriers operating in the state of Illinois had pending before the Illinois commission an application for the same increases in intrastate transportation charges as we should find and later found reasonable for interstate application in the eastern district I. C. C.

strict. On August 10 that commission authorized a "temporary"¹ increase of 33½ per cent in the rates above referred to and in all rates and charges for freight services in effect at the end of federal control, February 29, 1920, or made effective subsequently with the authority or at the direction of the Illinois commission. An increase of 20 per cent in excess-baggage charges was also authorized. Except as to excess-baggage charges stated in percentages of passenger fares, which therefore were not changed, tariffs were filed giving effect to these increases, August 26, 1920, the date on which the interstate increases were made. On milk and cream the Illinois commission permitted no increases.

As stated in our previous report herein, this proceeding was subsequently instituted by us upon the petition of the steam railroads in Illinois, together with the Chicago, Lake Shore & South Bend Railway, an electric line; and the receiver of the Aurora, Elgin & Chicago Railroad intervened, seeking the same relief, so far as the electric third-rail division of that road is concerned, as might be granted the other carriers.

It will be observed that the increase of 33½ per cent granted by the Illinois commission in charges for freight services was the same as that authorized by us for application to joint or single-line through rates between general rate groups. It is stated on behalf of the Illinois commission that it adopted this figure largely because in our original report in *Increased Rates, 1920, supra*, part of Illinois was recognized as in western territory and part as in eastern territory, thus making much of the intrastate traffic intergroup. The further statement is made on behalf of the Illinois commission that the conclusion it reached was believed to be in conformity with the conclusion announced in our original report. At the time it rendered its decision the Illinois commission was not advised of our supplemental report fixing 40 per cent as the proper increase for the Illinois district. Subsequently that commission reopened its case for further consideration in the light of our supplemental report, and

¹ The order of the Illinois commission provided in part as follows:

IT IS FURTHER ORDERED that this cause be set down for hearing at Chicago, Illinois, on Thursday, October 21, 1920 [later changed to September 23, 1920], at ten o'clock a. m., and the aforesaid carriers are directed to present at that time more specific evidence as to the valuation of their properties within the State of Illinois, and as to operating revenues and operating expenses within this State. They are also directed to present more specific evidence from which the Commission may determine as accurately as may be possible the facts relative to that portion of their business which is subject to the control of this Commission. Illustrating one of the subjects as to which, in our opinion, additional proof is required, we direct the attention of the aforesaid carriers to pages 844 to 847 of the Congressional Record of December 9, 1919. The order in this case has been made upon a showing of grave emergency and upon a record which in important respects is unsatisfactory and incomplete, and the further continuance of the authority herein contained is conditioned upon the presentation, by the petitioners and interveners at as early a date as is possible, of the evidence which complies substantially with the rules which this Commission is required to follow in making valuations of property for rate-making and in fixing permanent rates.

further hearing was had September 2, 1920, in which a representative of this Commission, at the invitation of the Illinois commission, participated. When the instant case came on for hearing the Illinois commission had not rendered a supplemental decision, and it requested a continuance in order that it might have time to receive and consider certain data as to value and as to the revenues and expenses of the lines in Illinois, upon which it might base its final conclusion. This case was accordingly continued to October 6, and then to October 7, 1920, at which time we were again advised that the Illinois commission had not reached a final decision. Our hearing, however, was completed on that date.

On October 18 the Illinois commission issued its supplemental order, which, in accordance with permission given at the hearing, was filed in the record in this case. This supplemental order modified the previous order in that it prescribed for intrastate application, in lieu of the 33½ per cent increase, a new scale of class rates and seven different scales of commodity rates on a number of important articles of traffic. It was stated in the report of the Illinois commission that these schedules would not increase intrastate rates 40 per cent, but would increase them in excess of 35 per cent. The carriers assert that the new scales will yield less than 33½ per cent, but the data upon which they base this conclusion are subject to serious question. Rates and charges for all freight services, other than covered by the new scales, were, subject to a few minor qualifications, authorized to be increased 35 per cent, which was the amount of the increase we found would be proper for the western district in *Increased Rates, 1920, supra*. Incidentally, considerably more than one-half of the railroad mileage in Illinois is that of western lines. The new rates, like those first prescribed, were understood to be temporary.¹ Tariffs were filed in accordance with the Illinois commission's supplemental order and, subject to a few exceptions,² became effective November 15, 1920.

¹ In this connection, after referring to the "necessity of the carriers making out a case which complies with the rules by which this [the state] commission is governed under the state statute from which it derives its authority," the Illinois commission said:

"This case, therefore, will be set for further hearing and the carriers required to submit proof complying with the principles above stated. Adequate time will be given for this purpose, and unless the temporary rates which have been permitted to go into effect and to continue as modified by this order are sustained by competent and sufficient proof, the authority for the same, so far as it may depend upon the order of this Commission, must be withdrawn."

² (a) Coal and articles taking coal rates, effective date postponed until January 15, subject to further hearings and conferences in the meantime.

(b) At a conference between representatives of shippers and carriers and representatives of the Illinois commission and this Commission the representative of the Illinois commission stated he would recommend to his commission an increase of 40 per cent in the rates on grain to St. Louis and Cairo for the purpose of working out an equalization of a troublesome situation which was the subject of the conference. In the meantime the effective date of all of the balance of the grain rates provided for in the Illinois commission's supplemental order was postponed until December 15. Tariffs carrying out the adjustment agreed upon were subsequently filed and are now in effect.

Evidence offered by the carriers indicates that if the charges for freight services and the rates on milk and cream that were in effect at the time of the hearing are continued for one year, and there is the same intrastate movement during that year as in the calendar year 1919, the loss to the carriers, due to their failure to secure the same increases intrastate as interstate, will be about \$3,000,000. Stated otherwise, if the increased charges sought are proper but are not put into effect, rates on the other traffic of the carriers that serve Illinois must be disproportionately increased.

All the Illinois carriers involved are engaged in the handling of both state and interstate traffic. Generally the same train and often the same car that carries the intrastate traffic carries the interstate traffic.

Near the borders of the state of Illinois are such points as St. Louis and Hannibal, Mo.; Keokuk, Davenport, Muscatine, Burlington, Dubuque, and Clinton, Iowa; Beloit, Janesville, Madison, and Milwaukee, Wis.; Gary, Indiana Harbor, Hammond, Whiting, Lafayette, Terre Haute, and Evansville, Ind.; and Paducah, Ky. All, or practically all, such points are in constant competition, more or less, with cities in Illinois for population, industrial development, and business growth.

When individual manufacturers, jobbers, and dealers in these cities outside the state draw their coal, for instance, from Illinois mines they must pay relatively greater increases than their competitors just across the border in Illinois, and in shipping their goods into Illinois they must pay relatively more than the Illinois distributors. Thus, a double rate disadvantage is put upon the interstate shipper and his locality. As every business man knows, a competitor must often, if not generally, absorb the difference in freight rates against him or withdraw from the field. That such differences are prejudicial is a matter of common knowledge.

One of the most important instances of discrimination is found in the Chicago industrial district, which includes not only territory in Illinois in and about the city of Chicago, but reaches across the state line into Indiana, embracing such points as Gary, Indiana Harbor, and Hammond, with their great steel mills and other industries. These industries, when they located in these outlying districts, did so with the distinct understanding that they would forever be treated, from a rate standpoint, like all other points in the Chicago district, as though they were located within the city of Chicago. That is, Chicago rates were to apply to and from the entire industrial district. This arrangement had been adhered to

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in good faith for many years, but on August 26, 1920, the date on which the increases were made effective on both state and interstate traffic, the long-standing parity was destroyed, so far as traffic to and from points in Illinois was concerned, by the carriers increasing the rates between the Indiana points in the Chicago district and all stations in Illinois 40 per cent, under our finding, and between the Illinois points in that district and all stations in Illinois a lower percentage, under the Illinois commission's finding. That this treatment of the Indiana cities puts a cloud on their prospects and injures the ability of their industries to do business in Illinois against competitors favored by lower rates intrastate can not be denied.

St. Louis, Mo., and East St. Louis, Ill., are practically one community, yet the former's rates to and from points in Illinois have been increased 40 per cent and the latter's materially less. The effect, of course, is similar to that in the Chicago district. For instance, prior to August 26 the rates on coal from the Illinois mines to St. Louis were but 20 cents per ton higher than to East St. Louis, but since that date they have been 34 cents higher, not because of any change in conditions of transportation, but because the Illinois commission's judgment as to what was a reasonable increase happened to be different from ours.

Situations such as above described can be found at various points around the borders of the state.

Disparities between Illinois intrastate rates to and from Chicago and interstate rates between Illinois points and St. Louis were the subject of litigation in *Business Men's League of St. Louis v. A., T. & S. F. Ry. Co.*, 44 I. C. C., 308, wherein we found that the then existing adjustment was unduly prejudicial to St. Louis. The present rates present a similar situation.

In *Illinois Classification*, *supra*, it appeared that Indiana jobbers were shipping into Illinois in competition with Illinois shippers, but were confronted with relatively higher rates than were paid by their Illinois competitors to points in the same state. Except as to commodity rates in general, the situation was remedied as explained earlier in this report, but a similar difficulty has now been created.

Certain routes from Illinois coal mines to Illinois destinations are interstate while others are intrastate. Prior to August 26 the rates in most instances were the same via the different routes, but since that date the interstate rates from a given mine or group of mines are higher than the intrastate rates. The result is that interstate traffic has been practically destroyed by the coal being diverted to the intra-

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state routes. In other words, the intrastate business increases while the interstate traffic decreases. By the same token the intrastate rates jeopardize the interstate rates in that the interstate carriers must make the intrastate rates the measure of their interstate rates in order to secure part of the business.

Producers of coal in Indiana compete with producers in Illinois in shipping to Illinois points. The interstate shippers are at a greater disadvantage than before August 26, because of the relatively greater rate increases they have been called upon to bear. Producers in the northern Illinois field, however, which comprises mines located in Marshall, La Salle, Woodford, Grundy, and Bureau counties, offered evidence to prove that the intrastate rates from their mines to points in northern Illinois were not unreasonably preferential, and that no further increase should be allowed in such rates. These rates have been subjected to relatively greater increases in recent years than have the rates from the Indiana mines. In the following table the present rates from the competing mines to Chicago are compared with the rates formerly in effect:

	Intrastate, northern Illinois.	Interstate from Indiana groups.		
		Clinton.	Linton.	Princeton.
In 1910.....	\$0.50	\$0.70	\$0.80	\$0.87
On June 24, 1918.....	.77	.97	1.07	1.14
At present.....	1.40	1.75	1.92	2.015

Since June 24, 1918, the rates from northern Illinois to Chicago have been increased 82 per cent, while the rates from the Princeton group, in Indiana, have been increased only 77 per cent. If we look to the total increases since 1910 we find that the northern Illinois rate has been increased 180 per cent and the Princeton rate 130 per cent. The percentages of increase from each producing group to Chicago since June 24, 1920, and also since 1910 are shown below:

	Northern Illinois.	Clinton.	Linton.	Princeton.
Per cent of advance in each rate since June 24, 1918.....	Per cent. 82	Per cent. 83	Per cent. 79	Per cent. 77
Per cent of advance in each rate since 1910.....	180	144	140	120

In 1910 the rates from the northern Illinois mines to Chicago were 71 per cent of the rates from the Clinton group, but at present they are 79 per cent. The changed percentage relationships from the
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several groups to Chicago are shown below; that is, the northern Illinois rates were the following percentages of the Indiana rates:

	From—		
	Clinton.	Linton.	Princeton.
In 1910.....	<i>Per cent.</i> 71	<i>Per cent.</i> 62	<i>Per cent.</i> 57
On June 24, 1918.....	79	73	68
At present.....	79	73	69

However, notwithstanding the fact that the northern Illinois mines have been subjected to greater percentage increases, the differentials between the Indiana and the Illinois mines were increased on August 26, greatly to the detriment of the Indiana mines. The following table shows the differentials against Indiana on traffic to Chicago before and after the increase:

	Clinton.	Linton.	Princeton.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Before.....	20	26	27
After.....	28	32	31½

The differentials, rather than the rates themselves, are the matters which concern the coal producers. All of the above statements as to present rates are based on a 33½ per cent increase within Illinois. A 35 per cent increase was later allowed and resulted in slightly modified figures. The matter of coal rates is still pending before the Illinois commission.

Grain and grain-products rates in Illinois which before August 26 were on a parity with the interstate rates were on that date made generally 0.5 cent per 100 pounds lower than the interstate rates. These commodities are sold on narrow margins of profit and small rate differences result in difficulties as between competing markets. The situation, in so far as it affects East St. Louis, Cairo, Ill., and several other markets, was made the subject of conference, and the rates to those points have, with the permission of the Illinois commission, been increased 40 per cent, thus removing the cause of complaint as to them.

In our second supplemental report in *Illinois Classification*, 56 I. C. C., 687, we found that the adjustment of brick rates from Illinois and Indiana producing points to various destinations in Illinois was unduly prejudicial to the Indiana producers. We recommended to the Director General that, pending the outcome in Docket No. 10738, in which the whole situation was and still is under consideration I. C. C.

tion, a rate of \$1.40 per net ton be established on brick, other than common, from the Indiana and Illinois producing points to Chicago, and that rate was put into effect. On August 26, 1920, the rate from the Indiana points became \$1.96, while that from the Illinois points became \$1.865. This situation would be corrected by a 40 per cent increase in the Illinois intrastate rates in effect August 25, 1920.

The various rate situations hereinbefore described are cited as examples. Others of the same general character are shown by the record, and many others could be found. The contention is made by the Illinois interests that we should limit any finding of undue prejudice to the localities specifically shown to be affected. To our views upon the law of the case as expressed in our previous report herein and in *Rates, Fares, and Charges of N. Y. O. R. R. Co.*, 59 I. C. C., 290, we may add that the instances pointed out are merely typical of a condition that is general. The rates to and from the various points on any given commodity, both state and interstate, local and joint, are closely related and interrelated, and the creation of material differences between them is subversive of established and sound economic and commercial conditions, resulting in a situation which could not reasonably be approved.

The Illinois commission points out that there are some instances where individual intrastate rates in that state, even with the lesser increases allowed by it, happen to be as high as or higher than those applicable interstate for equal distances; but it is not claimed that this is true of the general body of rates. The application of lower rates intrastate in Illinois than for similar hauls interstate in the Illinois district and central territory is general, and even with increases in the amounts allowed by us in *Increased Rates, 1920*, and *Authority to Increase Rates, supra*, the intrastate rates on most of the important articles of traffic in Illinois would still be lower than the interstate rates in central territory. The differences are due in large part to the failure of the Illinois commission to grant the same increases in recent years as have been authorized by us.

Evidence was offered by the Illinois commission as to traffic density, showing that the western and southern lines have a density in Illinois much greater than the average on their entire systems and greater than the eastern lines have in Illinois. The figures for Illinois do not represent merely intrastate traffic, but all traffic that moves within, into, out of, or through the state. The traffic density on the eastern lines in Illinois is, in general, much less than on their entire systems, and the figures do not indicate to us that Illinois should have a lower basis of rates than obtains in the territory east thereof.

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The Illinois commission also points out situations arising from the 40 per cent increase in the Illinois district as compared with the 35 per cent increase between Illinois and points in western territory and the 33½ per cent increase between Illinois and southern territory, pursuant to *Increased Rates, 1920*. The rate from Chicago to Davenport, involving a haul entirely within the Illinois district, takes an increase of 40 per cent, whereas from Chicago to points in Iowa just west of Davenport and in competition with it the increase has been but 35 per cent, thus lessening the rate difference that formerly existed in favor of Davenport. Rates on coal from Kentucky fields to Illinois points, involving hauls from the southern territory into the eastern territory, were increased 33½ per cent, as against the increase of 40 per cent sought within Illinois. These situations are considered by that commission as justifying an intermediate percentage increase intrastate in Illinois as a border state. Situations of the kind cited are, of course, general and can be found at all points along the northern, western, and southern borders of the Illinois district and in fact at any place in the country where any two of the rate groups fixed in *Increased Rates, 1920, supra*, adjoin. The difficulty could have been avoided only by a horizontal increase for the entire country. This was recognized in our report.

Some readjustments may be appropriate in individual instances where substantial injury results. An approval of the Illinois commission's rates would mean the approval of lower rates in Illinois, and indirectly lower rates perhaps west of the Mississippi River, than in official classification territory. Such inequalities as call for readjustment may be brought to our attention in the appropriate way and dealt with as occasion requires.

After the Illinois commission's first order was issued the Public Service Commission of Indiana rendered its report on an application for increases to the extent authorized by us. The Indiana commission declined to grant such increases and expressly indicated in its report that it was controlled by the action of the Illinois commission and by the existence of lower intrastate rates in Illinois than in Indiana. In other words, the Indiana commission felt that in justice to the citizens of Indiana it could not permit higher rates within that state than applied within the state of Illinois. It requires no stretch of the imagination to realize what would be the situation if every state in the Union would take similar action, savoring of reprisal and retaliation, thus requiring the imposition upon interstate traffic of unreasonably disproportionate increases in order to insure the prescribed return. It was just such a situation that Congress sought to prevent when it enacted the statutory provisions with which we are here concerned.

In *Indianapolis Chamber of Commerce v. O., O., O. & St. L. Ry. Co.*, 60 I. C. C., 67, decided December 30, 1920, we found, *inter alia*, that the rates on cattle and hogs, in carloads, from certain points in Illinois to Indianapolis, Ind., were just and reasonable, but that the relationship between those rates and the intrastate rates from the same originating territory to Chicago, East St. Louis, and Peoria, Ill., subjected Indianapolis and shippers there located to undue prejudice and disadvantage, to the undue preference and advantage of the above-named Illinois destinations. To correct the maladjustment we prescribed the application to the intrastate traffic of rates on the interstate basis, and our findings and conclusions in the instant case are in harmony therewith.

Upon this record we find no conditions within Illinois so different from those affecting interstate traffic as to justify the present differences in rates. Illinois intrastate traffic is not contributing its just proportion of the revenues of the carriers, measured by the statutory rate of return "upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." The record establishes that the present intrastate charges for freight services and for the transportation of milk and cream by the steam railroads subject to our jurisdiction and by the Chicago, Lake Shore & South Bend Railway and the receiver of the Aurora, Elgin & Chicago Railroad on the third-rail division of that line, in Illinois, lower than the just and reasonable corresponding interstate rates and charges authorized in and established in the eastern group, including the Illinois district, pursuant to Ex Parte 74, afford intrastate traffic and shippers and localities within the state undue preference and subject interstate traffic and shippers and localities outside the state to undue prejudice, and unduly, unjustly, and unreasonably discriminate against interstate commerce.

We are of opinion and find that to remove the unlawful preference, prejudice, and discrimination found to exist, charges for freight services and rates for the transportation of milk and cream intrastate in Illinois, in effect August 25, 1920, should be increased in amounts corresponding to those authorized in *Increased Rates, 1920*, and *Authority to Increase Rates, supra*, with respect to the interstate rates and charges in the eastern group and including the Illinois district. These findings shall not, however, be construed as prohibiting the restoration or establishment of proper differentials as between coal mines in Illinois and Indiana.

An appropriate order will be entered.

HALL, EASTMAN, and POTTER, *Commissioners*, dissent.

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No. 11088.¹

STANDARD OIL COMPANY (KENTUCKY)

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL
RAILROAD COMPANY, ET AL.

Submitted April 24, 1920. Decided January 13, 1921.

Rates for the transportation of crude, fuel, and gas oils from Crichton and Shreveport, La., to Louisville, Ky., found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaints dismissed.

Charles Van Overbeke for complainant.

William Burger and *R. O. Milling* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, to which exceptions were filed by complainant.

Complainant, having an oil refinery at Louisville, Ky., assails as unreasonable, unjustly discriminatory, and unduly prejudicial the rates on crude, fuel, and gas oils, hereinafter referred to collectively as crude oils, from Crichton and Shreveport, La., to Louisville. We are asked to award reparation upon 154 carload shipments of fuel and gas oil which moved between July 4, 1918, and March 8, 1919, from Crichton, and on 27 carloads of crude petroleum which moved between June 15 and June 24, 1918, from Shreveport to Louisville.

For simplicity we will deal specifically in this report only with the rate of 28.5 cents per 100 pounds, which represents an increase of 4.5 cents over the rate in force prior to the effective date of general order No. 28 of the Director General of Railroads, and which was the rate applicable on petroleum and its products generally from both points of origin. Complainant regards the rate as reasonable, applied to refined petroleum, but seeks to show that the crude oils should have a lower rate. All the rates herein referred to have taken ratable increases under our decision in *Increased Rates, 1920*, 58 I. C. C. 220, since the submission of the case. Rates stated herein were applicable prior to the increases so permitted.

¹ The report also embraces No. 11088 (Sub-No. 1), Same v. Director General, as Agent, Alabama & Vicksburg Railway Company, et al.

In support of its position that the refined-oil rate is reasonable, or rather as high as it should be, complainant points out that it is only 3 cents lower than the rate of 31.5 cents on refined oils from Crichton and Shreveport to Chicago, Ill., while the differential, Louisville under Chicago, usually observed on other fifth-class traffic is 4.5 cents. In other words, taking Chicago as a base, complainant suggests there might be justification for regarding a rate of 27 cents rather than 28.5 cents as proper for refined oils to Louisville. It contends that the rate on crude oils should be at least 5 cents less.

Crude oils are estimated to weigh 7.4 pounds per gallon and refined oils 6.6 pounds per gallon. Charges are collected on this basis, and a car of any given capacity, if filled with a crude oil, would have a greater weight, and on a given rate would yield greater per-car earnings than if filled with a refined oil. Refined oils are worth two or three times as much as crude oils.

Complainant refers to the various cases in which we have established lower rates on crude than on refined oils in western territory. It compares the rates on crude oils with the rates on refined oils applicable in various parts of the country, principally in the west, and shows that rates on the crude oils range from 28 to 88 per cent of the rates on refined oils. The rate on crude oils from Crichton and Shreveport to Chicago is 26.5 cents, or 5 cents lower than on refined oils, while to Louisville no differential is maintained as between the crude and refined oils. There are rates on crude oils from Salt Lick, Ky., to Louisville and other points, on the basis of 6.6 pounds per gallon, which average about 60 per cent of the refined-oil rates from and to the same points. For instance, the rate to Louisville on the crude oils is 14 cents as compared with 23 cents on the refined oils. The rates on refined oils, however, are merely nominal rates, as only crude oils are shipped from Salt Lick. Complainant also refers to rates from Port Tampa and Jacksonville to interior points in Florida, applicable on crude oils received from Mexico and Louisiana, which are very much lower than the rates from and to the same points on refined oils. The movement of the refined oils is not, however, comparable with that of the crude oils, which are used in the burning of phosphate rock and which move in large volume. The rates from Tampa are now before us in *International Agricultural Corp. v. Director General*, 60 I. C. C., 726.

Complainant distributes most of its output in Kentucky, but ships a considerable portion to Alabama, Mississippi, and northeast Georgia. It competes principally with refiners at New Orleans and Baton Rouge, La., and with Texas refiners who maintain a distributing station at Mobile, Ala. Complainant urges that on crude oils from Crichton and Shreveport to Louisville a rate of 22.5 cents, or 6

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cents less than on refined oils, would compare favorably with a rate of 22.5 cents recently in effect from the same points of origin to Fayette and Georgetown, Ky., for a slightly greater haul. Prior to June 25, 1918, the effective date of general order No. 28, the rate to Fayette and Georgetown was 18 cents.

The lower rates that formerly applied to Fayette and Georgetown were established because of special circumstances. In 1905 certain interests built refineries at these points, expecting to use Kentucky crude oils, but a few years after they began operations the Kentucky oil fields fell into the hands of competitors, and the source of supply was cut off. They began drawing some crude oil from Lawrenceville, Ill., on a rate of 11.5 cents, and advised certain southwestern lines that they would use Louisiana crude oil if freight rates were made low enough. Thereupon, to save the industry and create a movement from Louisiana, the carriers departed from their usual policy of applying combination rates and established a joint through rate of 18 cents to these refining points. The refineries discontinued business in 1912 and subsequently dismantled their plants. The specially established rates, though of no use after the refineries ceased operations, were allowed to remain in force, and under general order No. 28, as amended, were increased to 22.5 cents. However, they were all canceled in August, 1919, except one which applied via the Kansas City Southern and which was overlooked until it was cited by complainant. It has now been canceled.

The rates complained of had their inception in certain action taken some years ago by the St. Louis Southwestern Railway, and defendants claim they are exceptionally low. In 1915 Louisiana oil producers suggested that they should have rates from Shreveport to Ohio River crossings made with relation to the rates from New Orleans to those points. The principal southwestern oil lines opposed any reduction, because they feared it would jeopardize their rates from producing points generally in Louisiana, Texas, and Oklahoma, but the St. Louis Southwestern nevertheless published a rate of 24 cents from Shreveport to Louisville. This represented a reduction from the combination rate then in effect. The St. Louis Southwestern in establishing the 24-cent rate had the prospect of securing a heavy tonnage, and had little to lose, as it was not to any considerable extent an oil-carrying road and was only slightly concerned with the southwestern oil-rate situation. The rate was subsequently made applicable by way of certain competing lines, and was also published from other points, including Crichton, which is intermediate via the line of the Louisiana Railway & Navigation Company. As already stated, the 24-cent rate was increased to 28.5 cents as a result of general order No. 28.

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There is much in the record to the effect that the rates assailed were abnormally low. Oil rates from the west and southwest to points east of Chicago and the Mississippi River are almost universally made on the basis of Mississippi River combinations. At the time of the hearing the 28.5-cent rate to Louisville was apparently the only exception to the rule. The rate would be 35.5 cents had not the usual basis been departed from. Since the rate from Crichton and Shreveport to Louisville is less than the combination on the Mississippi River, it is relatively lower than apparently any other rates from producing points west of the Mississippi River to consuming points east of the river. That it is below the usual level is abundantly shown.

During the year 1919, Louisville received via the Louisville & Nashville and Southern railroads considerable quantities of crude oil from Texas and Oklahoma fields and from Louisiana points other than those here involved. Although the hauls were generally shorter, the rates paid were in every instance higher than were paid on the movements from Shreveport and Crichton, in amounts ranging from 4 to 12 cents. This situation, defendants contend, indicates that the rate adjustment has little to do with the movement and does not determine the sources from which complainant shall draw oil. In any event, exceptionally low rates from Crichton and Shreveport are apparently not necessary.

While it is true, as pointed out by complainant, that we have in several cases held that rates on the lower-grade oils should be somewhat lower, usually 5 cents, than on the higher-grade oils, in none of such cases were the rates on crude oil on a basis as low as here. The rate of 28.5 cents yields ton-mile earnings of but 5.4 mills and 6.15 mills from Crichton and Shreveport, respectively. This rate represents an increase of 4.5 cents in the rates in force prior to June 25, and several of the shipments on which reparation is claimed moved prior to that date.

Defendants assert that rates on crude oils lower than on refined oils generally owe their origin to the fact that the crude-oil rates were depressed by pipe-line competition and peculiar commercial and industrial conditions, rather than to any substantial difference in transportation conditions as between the two kinds of oil.

The rate of 28.5 cents is closely related to the rate of 26.5 cents from the same points of origin to East St. Louis, Ill., which was found not unreasonable in *Consolidated Oil Refining Co. v. K. C. S. Ry. Co.*, 53 I. C. C., 96. In that case as in this the complainant sought a differentiation in rate as between crude and refined oils, but was not sustained. Even assuming that there should be a different rate on crude than on refined oils, there is here no warrant for holding

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that the difference should be expressed by a reduction in the rate on the crude oils. We find that the rates here assailed were and are not unreasonable, unjustly discriminatory, or unduly prejudicial. Subsequent to the hearing, the rate from Crichton and other points south of Shreveport was increased to 30 cents. No corresponding increase was made in the rate from Shreveport. A shipment from Shreveport to Louisville via the route of the Louisiana Railway & Navigation Company, through New Orleans, would pass through Crichton. This departure from the long-and-short-haul provisions of the fourth section of the interstate commerce act was created without our authority and was and is unlawful and should be corrected immediately. The complaints will be dismissed.

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No. 11186.

SHAFFER OIL & REFINING COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS &
TEXAS RAILWAY COMPANY, ET AL.

Submitted October 23, 1920. Decided January 13, 1921.

Rate on gas oil, in tank cars, from Cushing, Okla., to Neodesha, Kans., found to have been unreasonable and unduly prejudicial. Reparation awarded.

Ralph Merriam and Clifford Thorne for complainants.

John F. Finerty, Alex. M. Bull, and C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was argued orally before us.

By complaint, filed January 26, 1920, the Shaffer Oil & Refining Company, a corporation engaged in producing and refining petroleum, alleges that the rate of 19.5 cents per 100 pounds charged on numerous tank-car loads of gas oil shipped during the period from January 1 to April 6, 1919, inclusive, from Cushing, Okla., to Neodesha, Kans., was unreasonable and unduly prejudicial to the extent that it exceeded a rate of 14.5 cents contemporaneously in effect from other points in Oklahoma to Neodesha. We are asked to award reparation only. Rates are stated herein in cents per 100 pounds, and do not include the increases authorized by us in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments moved over the Missouri, Kansas & Texas to Coffeyville, Kans., and the Missouri Pacific beyond, 145 miles. Charges, based on the established tariff rate of 19.5 cents, were ultimately borne by the consignor of the shipments, the Consumers Refining Company, a dormant corporation, to whose rights, titles, and interests the Shaffer Oil & Refining Company asserts, but without specific proof, that it is the successor. By an amendment at the hearing the Consumers Refining Company was made a complainant.

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Gas oil is a petroleum distillate which is run off after the more volatile and higher-grade oils, such as gasoline, naphtha, and kerosene, have been extracted from the crude oil. After gas oil has been removed, a large percentage of the residuum is fuel oil. Gas, fuel, and crude oils are of higher specific gravity and sell for much less than the higher-grade oils. For tariff purposes the more volatile oils are estimated to weigh 6.6 pounds to the gallon, while gas, fuel, and crude oils are estimated at 7.4 pounds. When transported in tank cars the charges are based on the estimated weights for the gallonage capacities of the cars. In a number of cases we have fixed a differential on crude, gas, and fuel oils of 5 cents under the rates applicable on the higher-grade oils. *Kansas City Refining Co. v. Director General*, 57 I. C. C., 197, and cases there cited.

Prior to June 25, 1918, the rate on gas oil from Cushing to Neodesha was 15 cents. This rate likewise applied to petroleum and its products from southwestern lines group-A points in northeastern Oklahoma, including Cushing, to Kansas City, Mo., and to defined points in southeastern Kansas. The average distance from the Oklahoma points to Kansas City is 251 miles, and the 15-cent rate to this point was found reasonable in *Midcontinent Oil Rates*, 36 I. C. C., 109. Contemporaneously, there was in effect a rate of 10 cents on crude and fuel oils from Cushing to Neodesha. This rate also applied between defined points in Oklahoma and Kansas. On June 25, 1918, the rates on gas oil and on crude and fuel oils were increased to 19 cents and 12.5 cents, respectively, by general order No. 28 of the Director General of Railroads. Shortly thereafter, by Freight Rate Authority No. 96 of the director of traffic, United States Railroad Administration, a flat increase of 4.5 cents was made applicable on all petroleum rates in lieu of the 25 per cent increase prescribed in General Order No. 28. This made the rates from Cushing to Neodesha 19.5 cents on gas oil and 14.5 cents on crude and fuel oils. On April 7, 1919, the gas-oil rate was reduced to 16.5 cents, and on July 26, 1919, it was further reduced to 14.5 cents. This rate is satisfactory to complainants as a basis for reparation.

Complainants introduced evidence to show that when the shipments moved the price of gas oil f. o. b. Oklahoma refineries was 3.5 cents to 4.5 cents per gallon, while gasoline sold from 17.25 cents to 17.75 cents per gallon. They point to the fact that they had to pay the refined-oil rates on their shipments, while a rate of 14.5 cents applied between the same points on fuel oil, which has but a slightly lower value, and on crude oil, with a slightly higher value than gas oil. An exhibit filed by complainants shows that the defendant carriers' earnings on all traffic for the year ending December 31, 1917, amounted to 15.24 cents per loaded and empty car-mile

for an average haul of 289 miles. The similar yield on complainants' shipments amounted to 45.77 cents, while under a 14.5-cent rate it would have been 34.04 cents. The rate assailed yielded earnings of 26.9 mills per ton-mile, and the subsequently established rate of 14.5 cents yielded 20 mills per ton-mile. As further evidence of the unreasonableness of the rate assailed, complainants enumerate a number of Oklahoma points adjacent to Cushing from which a rate of 14.5 cents was contemporaneously in effect on crude, gas, and fuel oils to Neodesha. With respect to these comparisons the defendants observe that the 14.5-cent rate applied for movement direct from producing points in Oklahoma to refining points in Kansas served by the St. Louis-San Francisco Railway; and that it was the practice of the carriers to maintain a differential between one-line and two-line hauls. Complainants reply that the number of carriers involved is immaterial, since the shipments moved while the carriers were under a unified and coordinated federal control.

Defendants contend that the lower rate subsequently established from Cushing to Neodesha was put in for the purpose of according Cushing a relatively more favorable adjustment with respect to the rates from other Oklahoma points, and not because the rate assailed was intrinsically unreasonable. They assert that the northbound rates on oil from Oklahoma points are on a relatively low basis, due to the fact that when oil was first discovered in the Kansas field, low rates were made effective from points in that field to the distributing centers of Kansas City and St. Louis, Mo., because of the low rates already in effect to these points from refineries on or near the Mississippi River; that when the Oklahoma oil field was opened, the rates from these points were constructed with reference to the rates from the Kansas points, which resulted in blanket rates being applied generally from these two fields to the distributing centers, without reference to distance or service; that the Kansas rates have been kept low by state statute, and that this has resulted in keeping the northbound rates from Oklahoma points at a low level.

As evidence of the fact that the southbound rates are higher than the northbound rates, defendants point to the Commission's decision in *National Petroleum Asso. v. M., K. & T. Ry. Co.*, 47 I. C. C., 355. In that case, we had under consideration the establishment of reasonable maximum rates on petroleum and its products from southeastern Kansas group-A points to specific destinations in Oklahoma. Among the rates so prescribed were rates of 15 cents to Tulsa and 17 cents to Cushing for average distances of 131 miles and 153 miles, respectively. These rates were increased to 19.5 and 21.5 cents, respectively, by the Director General. Petroleum and its products are rated fifth class in western classification, and defendants further

contend that the rate assailed was reasonable in that it was 50 per cent of the fifth-class rate of 39 cents, concurrently in effect for a distance of 145 miles.

As evidence that there is no uniformity in the oil rates from Oklahoma producing points to Kansas points, nor any fixed relationship between the rates on high-grade and low-grade oils, defendants submit an exhibit showing the present rates on refined, gas, and crude oils, from Cushing, Tulsa, Muskogee, Oklahoma City, and Ardmore, Okla., to Neodesha, Coffeyville, and other Kansas points. They compare these rates with the fifth-class rates for similar distances to show the reasonableness thereof. Such comparisons, as has been previously observed by us, assume that class rates are the normal rates for the transportation of all freight. *The Southeastern Sugar Cases*, 48 I. C. C., 739, 742.

No attempt is made by the defendants to justify the charging of higher rates on gas oil than on crude or fuel oils between the same points, nor are any convincing reasons advanced for the maintenance by the Director General of lower rates on gas oil from Oklahoma producing points more distant than Cushing to Neodesha and other Kansas destinations.

We find that the rate assailed was unreasonable and unduly prejudicial to the extent that it exceeded 14.5 cents per 100 pounds; that complainant Consumers Refining Company made the shipments as described and bore the charges thereon; that it was damaged to the extent of the difference between the rate charged and the rate herein found reasonable; and that it, or its legal successor in interest, or assigns, is entitled to reparation, with interest, upon presentation of a statement in the manner and form provided by rule V of the Rules of Practice.

No. 11108.

KURTH MALTING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, GREAT NORTHERN
RAILWAY COMPANY, ET AL.

Submitted June 28, 1920. Decided December 21, 1920.

Rate on barley malt, in carloads, from Great Falls, Mont., to Milwaukee, Wis., found not unreasonable or otherwise unlawful. Complaint dismissed.

Harold G. Simpson for complainant.

F. G. Durety for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation engaged in the milling and malting of grain at Great Falls, Mont., alleges that the rate of 70.5 cents per 100 pounds charged by defendants on six carloads of barley malt shipped during October, 1918, from Great Falls to Milwaukee, Wis., was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded 43.5 cents. Reparation and the establishment of a just and reasonable rate for the future are sought. Rates will be stated in cents per 100 pounds.

The shipments moved over the Great Northern, the Chicago, St. Paul, Minneapolis & Omaha, and the Chicago & North Western, a distance of 1,353 miles. Charges were collected at the applicable combination rate of 70.5 cents on grain and grain products, including barley malt, made up of a distance rate of 33 cents to Mondak, Mont., and commodity rates of 25 cents from Mondak to Minnesota Transfer, Minn., and 12.5 cents beyond. Contemporaneously defendants maintained a commodity rate of 43.5 cents on grain and grain products, including barley, barley-malt sprouts, and wheat, but this rate, contrary to complainant's contention, was not applicable on barley malt.

Complainant contends that malt should take no higher rate than barley, which has less bulk and contains more moisture than malt.

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Its witness testified that at the time of shipment the malt was worth about 10 cents a bushel more than barley. It referred to a commodity rate on malt of 65.5 cents from Manhattan, Mont., to St. Paul, Minn., Kansas City, Mo., and Omaha, Nebr., yielding by the "most direct or natural routes" ton-mile earnings of 12.4 mills, 10.86 mills, and 12.4 mills, respectively; to a blanket commodity rate on malt of 56.5 cents from Pacific coast points such as Seattle, Everett, and Blaine, Wash., and Portland, Oreg., into Montana territory which for the minimum haul, Everett to Kalispell, Mont., 602 miles, yields ton-mile earnings of 18.7 mills, and for the maximum haul, Blaine to Butte, Mont., 1,088 miles, yields 10.38 mills; and to the grain rate, applicable on malt, of 14 cents from Minneapolis, Minn., to Fargo, N. Dak., 232 miles, yielding about 12 mills per ton-mile. The ton-mile earnings of 10.42 mills under the 70.5-cent rate assailed compare favorably with the earnings under these rates.

Defendants urge that grain rates from Montana were and are subnormal, having been originally established to promote the production of grain in that state; that malt is a manufactured article and barley a raw material; that malt commands a higher price than barley, and that it is not a universal practice in western territory to publish the same rates on malt as on barley. They say that but three other carloads of malt have been shipped over the Great Northern from Great Falls to Milwaukee since 1918, and that there is no probability of future shipments.

Upon this record we find that the rate assailed was not and is not unreasonable or otherwise unlawful.

The complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

In this case the applicable rate on barley malt was 70.5 cents, while from and to the same points a commodity rate of 43.5 cents was charged on grain and grain products, including barley, barley-malt sprouts, and wheat. While I agree that it has not been shown that the rate of 70.5 cents was unreasonable, it seems to me that the relationship between the rate on barley and the rate on barley malt is wrong and should be corrected. It is unduly prejudicial to anyone who may desire to manufacture barley malt at Great Falls. In *Texas Brewing Co. v. A., T. & S. F. Ry. Co.*, 21 I. C. C., 171, and in *Electric Malting Co. v. A., T. & S. F. Ry. Co.*, 23 I. C. C., 378, we considered the relationship between the rates on barley malt and barley and found that it should be the same as the corresponding relationship between the rates on flour and wheat, and I think this should be our decision here. It was in substance the conclusion proposed in the examiner's report, to which no objections were filed.

60 I. C. C.

The fact that barley malt apparently is not now being manufactured at Great Falls is no adequate reason for withholding a finding of undue prejudice. An improper relationship which threatens harm is, I think, as unlawful as one which is now causing harm.

No. 10832.

MOUNT HOOD RAILROAD COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY.

Submitted April 19, 1920. Decided December 27, 1920.

Demurrage charges for the detention on complainant's line of cars moving in interstate transportation found to have been legally applicable, and not shown to have been unreasonable or otherwise unlawful. Complaint dismissed.

Joseph N. Teal, William C. McCulloch, and Rogers MacVeagh for complainant.

R. V. Fletcher, A. C. Spencer, and W. A. Robbins for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS CLARK, MEYER, AND AITCHISON.

BY DIVISION 1:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainant, and the case has been orally argued before us.

Complainant, a common carrier, operates 22 miles of railroad in the state of Oregon, connecting with the Oregon-Washington Railroad & Navigation Company, hereinafter called defendant, at Hood River, Ore. In December, 1917, a flood washed out certain of complainant's tracks and disaligned its trestle bridge across Hood River. Repairs were promptly made, but as traffic could not be interchanged with its connection between December 14, 1917, and January 20, 1918, 17 cars supplied by defendant were detained on its line during that period. Prior thereto these carriers had entered into the average agreement provided by rule 9 of defendant's demurrage tariff, and the issue here presented concerns the lawfulness of demurrage charges assessed for such detention. Alleging that its inability promptly to return the cars was attributable solely to an act of God, complainant, in the original complaint filed, attacks the legality of the charges,

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and by amendment filed upon the hearing assails the reasonableness of the tariff rules in that they fail to provide for extension of the free time to cover a contingency of this character. The charges have not been paid and the complainant here asks to be relieved of paying them.

It appears that of these cars, eight moved interstate and nine intrastate. By proclamation of the President, the federal government, as of noon, December 28, 1917, assumed control of the various transportation systems within the continental United States.

Under section 206(c) of the transportation act, 1920, it is our duty to entertain complaints praying for reparation on account of the collection by or through the President during federal control of charges in violation of the interstate commerce act. This report will cover the interstate shipments during the entire period; but has reference to intrastate shipments only in so far as charges accruing during federal control are concerned.

While, as has been stated, the original complaint brings in issue the construction of defendant's demurrage tariff and the amended allegations challenge the reasonableness of that tariff, and while the case was presented upon that theory and in the brief complainant's counsel urge that the jurisdiction of this Commission attaches, nevertheless it is now insisted upon brief that defendant's claim grows out of a mere private contractual obligation between carriers and "that these charges are not demurrage, and that therefore the tariffs, * * * which are quoted by defendant carrier as authority for assessing such charges are immaterial to the issue."

Fundamentally, demurrage may be said to be a charge for undue detention of cars by shippers. However, for the reason that a member of the American Railroad Association delivering cars of another member to a nonmember is responsible to the owner of the car in an amount equal to the per diem accruing on the car while on such nonmember road, it has been the custom in this territory for the lines members of that association to deal with their nonmember connections as shippers, subject to the demurrage tariffs. In several cases we have upheld the legality of demurrage charges assessed against such roads by their trunk line connections, and most of the small roads in Oregon have chosen to operate under the average-agreement plan. The complainant is not a member of the American Railroad Association. It appears that with the exception of its local traffic complainant is entirely dependent upon defendant for its car supply and at all times since it commenced operations has secured cars from defendant by paying demurrage assessed under that carrier's tariffs and on March 1, 1915, elected to substitute the average-agreement for the straight-demurrage plan and has since received the benefits thereof; also that the order for each of the cars involved

herein was signed by complainant as "shipper" and admittedly "the Mount Hood Railway Company as shipper, orders these cars delivered them as shipper" and "this average agreement bound complainant to comply with rule 9 of defendant carrier's Car Demurrage Rules named in defendant carrier's tariff, and to fully observe and comply with all the terms and conditions of said rules." Complainant's traffic representative moreover conceded that these were demurrage charges. It follows that the charges were governed by that tariff.

The average rule refers specifically only to detention of cars held by shippers or receivers for loading or unloading, and complainant contends that the rule does not authorize the assessment of the charges, as the cars were not held for those purposes. But the cars which are delivered to a shipper for loading or unloading do not cease to be held for those purposes within the meaning of the rule from the fact that the time of holding is extended by an act of God. *Drummond & S. W. Ry. Co. v. C., St. P., M. & O. Ry. Co.*, 21 I. C. C., 567.

Complainant's attack upon the reasonableness of the rules is supported only by the assertion that as the carrier under the uniform bill of lading is exempted from liability for loss or damage to property caused by act of God, the shipper should be protected by like exemption under the demurrage rules. But we have approved essentially similar rules in numerous cases, and in *Davis Sewing Machine Co. v. P., C., C. & St. L. R. R. Co.*, 51 I. C. C., 191, said:

Under defendant's * * * rules demurrage was and is assessable for detention beyond the free time, except that under the straight demurrage arrangement provision is made for an extension of the free time in case of bunching of shipments through the fault of the carrier, which concession is waived under an average agreement. The rules make no provision for additional free time for car detention on account of bunching resulting from an act of God. For any departure from those rules defendant would be guilty of a violation of the act. One of the purposes of the average agreement is, by credits for cars promptly released, to take care of detention caused by bunching and weather interference. *Alan Wood Iron & Steel Co. v. P. R. R. Co.*, 24 I. C. C., 27; *Michigan Mfrs. Asso. v. P. M. R. R. Co.*, 31 I. C. C., 329; *Castner, Curran & Bullitt v. P. Co.*, 42 I. C. C., 3.

Defendant has filed in the record a detailed statement showing separately the interstate and intrastate charges; but while complainant concedes the correctness of the computation, it is to be observed that apparently the aggregate interstate charges for each calendar month are not separately computed as required by the tariff, and if an error has been made in this respect the charges should be revised.

We find that, subject to correction of errors of computation, if any, the charges demanded on the cars that moved in interstate transportation during the whole period under consideration and on

the cars that moved intrastate during the period of federal control are in accordance with the applicable tariff provisions, and that the rules of the demurrage tariff have not been shown to have been or to be unreasonable or otherwise unlawful.

The complaint will be dismissed.

ATCHISON, *Commissioner*, concurring:

In view of our holdings in numerous cases, including those cited in the foregoing report, to the effect that the average rule is not necessarily unreasonable for failure to provide an exception to the accrual of demurrage charges when the detention results from an act of God, I am compelled to concur in the conclusions of the above report even though the case is one of obvious hardship. Having contracted to accept the benefits of the average agreement as contained in defendant's schedules on file with us, complainant must take it subject to its inherent disadvantages. The case furnishes a clear illustration of the unsuitability of demurrage arrangements as a rule of compensation for the interchange and detention of cars as between common carriers.

60 I. C. C.

No. 11063.

HOLLY RIDGE LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MISSOURI
PACIFIC RAILROAD COMPANY.

Submitted April 25, 1920. Decided December 21, 1920.

Switching charge of 2 cents per 100 pounds applicable at Monroe, La., found not unreasonable or otherwise unlawful. Complaint dismissed.

J. V. Norman for complainant.

Henry G. Herbel and *James M. Chaney* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, in the light of which we have modified the conclusions suggested by him.

Complainant, a corporation, operates a sawmill at Monroe, La. By complaint filed December 8, 1918, it assails as unreasonable and unduly prejudicial the charge applicable to interstate traffic of the Missouri Pacific, hereinafter called defendant, for switching cars at Monroe between its junction with the Vicksburg, Shreveport & Pacific, hereinafter called the Vicksburg, and complainant's mill. Reparation and the establishment of a reasonable charge for the future are sought. The charges hereinafter referred to do not include the increases under *Increased Rates, 1920*, 58 I. C. C., 220.

Complainant's mill is within defendant's yard limits at Monroe, but outside the city limits, and approximately 2.5 miles from defendant's junction with the Vicksburg. Prior to April 10, 1917, the switching charge applicable was \$5 on both interstate and intrastate traffic. On that date the interstate charge was increased to 2 cents per 100 pounds, minimum \$6 per car, but the intrastate charge of \$5 per car was not changed. Defendant makes no charge to or from complainant's mill on shipments originating at or destined to points on defendant's line.

A switching charge of 2 cents per 100 pounds also applies to and from the Grayling Lumber Company's mill at Monroe, complainant's only competitor at that point. The charges for switching to
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and from other industries at Monroe range from \$3 to \$5 per car for distances appreciably shorter on the average than to complainant's plant. The record does not show the number of cars which are ordinarily handled at one time to and from these industries.

Complainant contends that defendant nowhere else exacts a switching charge as high as 2 cents per 100 pounds, and refers to switching charges at other points on defendant's line ranging from \$2 to \$5 per car, but its witness was not familiar with the distances and volume of movement at certain of the important points. The \$3 charge at St. Louis, referred to by complainant, is a minimum charge. Defendant's switching charges at that point for varying distances range up to 2.5 cents per 100 pounds.

The movement to complainant's mill from the yard where the switching engines are kept, is about 3.6 miles, and about two hours are required to make a round trip. Defendant urges that the wages of the switching crew of six men, the cost of fuel and engine supplies, and the rental value of the engines, estimated at \$6.25 per hour on the basis of \$50 for a day of eight hours, make an operating cost of about \$24 for the round trip. It is shown, however, that there are three switch engines at this point which work 40 engine-hours or an average of 13½ hours per day. This would make the engine cost \$3.75 per hour instead of \$6.25 and reduce the round-trip cost from \$24 to \$19.

Complainant's outbound shipments during 1919 amounted to between 400 and 500 cars, about 100 of which moved over the Vicksburg. It states that it has experienced considerable difficulty in obtaining an adequate car supply, and that if the carriers would furnish a full supply more cars would be handled on each switching movement to and from its mill. Most of the inbound shipments of logs are from points on defendant's line, and are not subject to switching charge. It is frequently necessary to make the run from the mill to the junction with a single car, and complainant's traffic will probably not average in excess of 2.5 cars per round trip. Based on this average and complainant's average loading of 50,000 pounds, the interstate switching charge of 2 cents per 100 pounds would yield an average of \$25 per trip, of which the Vicksburg absorbs \$5 per car on shipments moving over its line. Apparently there is no absorption on intrastate traffic. The plant is so situated that very little traffic can be handled for other industries in the same movement. The average number of loaded cars switched to and from industries at Monroe is stated to be from 15 to 20 per day. Conditions at the other points referred to by complainant are not shown to be similar to those existing at Monroe. We have frequently

said that a mere comparative statement of charges unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that charges at a given point are unreasonable.

We find that the charge complained of was not, and is not, unreasonable or otherwise unlawful. The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

The switching charges which complainant attacks were increased from \$5 per car to a basis producing, on the average, about \$10 per car, and defendant attempts to justify this increase largely by the submission of cost-of-service figures. These cost statistics are far from convincing. They are based on the use of a crew made up of an engineer, a fireman, a foreman, and three helpers, although it is said that frequently but a single car is moved in a switching trip, and that the average is but 2.5 cars. It is not explained why so many men should be needed for such service. A round trip is said to consume about two hours, although the distance is but 7 miles, and this two-hour period is used in estimating the wages of the six men and the coal consumed by the engine. Why so much time should be required for so short a run is not explained. The cost of the engine, over and above operating cost, is figured at what is alleged to be its "rental value" of \$50 per day, and upon the assumption that it can be used only eight hours per day. Why an engine can be used only eight hours is not explained. Upon the basis of \$50 per day the cost of the engine per year would be \$18,250—an absurd amount. Clearly rental value and cost to defendant are different things. Moreover there is evidence that switching for other shippers is at times performed in connection with switching for complainant. Using such figures as these, defendant estimates a cost per round trip of \$24 as compared with an average revenue of \$25.

The switching charges assailed appear to be above the normal level of charges in the territory in question for service of a similar character. In my opinion defendant has not justified the increase by the evidence of record.

GO I. C. C.

No. 11039.

RIVERTON LIME COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL, AS AGENT, AND NORFOLK &
WESTERN RAILWAY COMPANY.

Submitted October 20, 1920. Decided December 29, 1920.

Interplant switching charges for the movement at Carson (Riverton), Va., of limestone and lime, in carloads, during the period June 25, 1918, to November 7, 1918, inclusive, found unreasonable. Reparation awarded.

William E. Carson for complainant.

Lucian H. Cocke, jr., and Charles J. Rixey for defendants.

John F. Finerty for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions to the report proposed by the examiner were filed on behalf of the Director General of Railroads.

Complainant is a corporation engaged at Riverton, Va., in the manufacture and sale of lime and other limestone products. By complaint filed November 28, 1919, it alleges that interplant switching charges for the movement of 154 cars of lime and limestone during the period from June 25, 1918, when the charges were increased under General Order No. 28, by the Director General, from \$2 per car, to \$2 per car plus 1 cent per 100 pounds on limestone, and to \$2 per car plus 1.5 cents per 100 pounds on lime, until November 7, 1918, inclusive, after which the charges were reduced to \$2.50 per car, were unreasonable to the extent that they exceeded the subsequently established charge. We are asked to award reparation. The rates and charges stated were those in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Complainant's plant is so located that some of its operations are conducted on the north side and some on the south side of the main line of the Norfolk & Western Railway, at Carson (Riverton). The limestone is moved from a quarry to kilns, a distance of about 1,180 feet, and the burnt product is moved thence to a grinding plant, a distance of from 200 to 250 feet, by defendants' power and equipment over tracks installed at the joint expense of complainant and

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the Norfolk & Western. In both instances the movement is across the main line of that carrier. This switching service, which does not include spotting, is performed by a road-haul engine. Defendants have a line haul on the finished product outbound.

Although complainant's witness testified that the average carload weight was 50 tons, and that in the production of 1 ton of lime 2 tons of limestone are required, he figures that the average charge for switching the cars in controversy was \$17.06, and emphasizes the enormous increase over the former charge of \$2. For the purpose of showing that these commodities can not bear the increases authorized by general order No. 28 it was testified that the average selling price of ground limestone for 1915 was \$1.34 per ton and \$1.56 for 1916. The price during 1918 was not stated.

At Stephens City, Va., within 10 miles of Riverton, where a competitor of complainant is located, the charge for the movement of lime was increased, effective June 25, 1918, to \$1 per ton plus 1.5 cents per 100 pounds, and, effective December 30, 1918, reduced to \$5 per car. The record does not disclose the length of movement. Complainant refers to a rate of \$3 per car said to be applicable on limestone for a distance of 20 miles over the Carolina, Clinchfield & Ohio, but the circumstances surrounding the transportation are not disclosed.

We find that the interplant switching charges in effect during the period named were unreasonable to the extent that they exceeded \$2.50 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. We are without authority to order refund of excess war-revenue taxes.

60 I. C. C.

No. 11278.
MIDLAND REFINING COMPANY
v.
**DIRECTOR GENERAL, AS AGENT, AND MISSOURI
PACIFIC RAILROAD COMPANY.**

Submitted July 12, 1920. Decided December 21, 1920.

Rate on sulphuric acid in tank-car loads from Coffeyville, Kans., to Eldorado, Kans., found not unreasonable. Complaint dismissed.

F. W. Lehmann, jr., Clifford Thorne, and Wm. Y. Wildman for complainant.

James M. Chaney and Henry G. Herbel for defendants.

A. M. Corp for Kansas Court of Industrial Relations.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation operating a petroleum refinery at Eldorado, Kans., alleges that the rate charged by defendants for the intrastate transportation of two tank-car loads of sulphuric acid, shipped October 17 and 26, 1918, from Coffeyville, Kans., to Eldorado, was unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the Missouri Pacific, a distance of 137 miles, and weighed 51,469 pounds and 61,292 pounds, respectively. The freight charges collected at the applicable fourth-class rate of 35 cents aggregated \$394.66. A commodity rate of 21.5 cents was established, effective October 30, 1918.

Complainant compares the rate assailed with certain commodity rates, contemporaneously maintained on like traffic as, for example, 21.5 cents between Coffeyville and Kansas City, Mo., 168 miles; from Kansas City to Eldorado, 188 miles; from Kansas City to Wichita, Kans., 213 miles; from Argentine, Kans., to Hutchinson, Kans., 214 miles; and from Coffeyville to many refining points in Oklahoma. It further shows that the rates on sulphuric acid throughout the same territory are generally less than the fourth-class rates; that the rate

charged yielded earnings of 51.1 mills per ton-mile and \$1.48 per car-mile; that the rate of 21.5 cents would have yielded 31.4 mills per ton-mile and 88.47 cents per car-mile; that the earnings per car-mile on all traffic on the entire line of the Missouri Pacific for the year 1917 were 20.65 cents for an average haul of about 245 miles; that the average value of sulphuric acid is much lower per ton than the average value of all traffic; and that loss-and-damage claims on sulphuric acid are negligible.

Obviously any other article moving at the fourth-class rate would yield the same ton-mile earnings.

The reasonableness of the fourth-class rate as such is not assailed, nor is the propriety of rating sulphuric acid fourth class. Complainant's contention is, in effect, that it was unreasonable to apply a class rate when the commodity usually moves on lower commodity rates. It is not shown that complainant requested the establishment of a commodity rate prior to these shipments, or that it ever before moved or attempted to move sulphuric acid from Coffeyville to Eldorado.

Complainant bought this acid from a plant at Coffeyville which manufactures or restores sulphuric acid from sludge. It formerly secured its supply from a plant at Denver, Colo.; and has since been buying from a plant at Argentine, a point from which the rate of 21.5 cents was in effect during October, 1918.

Defendants contend that reparation should not be awarded in this case on the basis of the subsequently established commodity rate; and say that there has been no movement before or since which has justified the establishment of that rate.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

The conclusion of the majority rests upon the theory that class rates may reasonably be applied to sporadic shipments of a commodity which ordinarily takes lower commodity rates. In general this is sound theory; but I think it can be too rigidly applied. Carriers do establish commodity rates because of a heavy or sustained movement of traffic, but that is not the only reason for the establishment of such rates. They are at times maintained because of the nature of the commodity and regardless of the volume of its movement. We have ourselves established distance scales of commodity rates applicable territorially, which we would hardly do if heavy or sustained movement were the only justification for departing from the classification.

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In this case the evidence shows that the carriers very generally maintain in the territory in question commodity rates on sulphuric acid materially lower than the fourth-class rates. Nor does it appear that these commodity rates are maintained only where there is a large or steady movement of traffic. The fact that a commodity rate was subsequently established between the points in question is evidence to the contrary. Further evidence is afforded by the fact that in 18 months but one car of sulphuric acid moved from Kansas City to Wichita, although a commodity rate was maintained between those points. Coffeyville is a point where sulphuric acid is manufactured and from which movements may be expected, and the 21.5-cent rate subsequently established was higher, distance considered, than the commodity rates in effect at the time of movement between numerous other points in Kansas and Missouri. The rate from Kansas City to Wichita, for example, was the same, although the haul is 50 miles greater.

In *Aetna Explosives Co. v. N. O. & N. E. R. R. Co.*, 53 I. C. C., 511, and in *Steel Cities Chemical Co. v. Director General*, 56 I. C. C., 723, class rates charged on sulphuric acid were condemned and reparation awarded, notwithstanding it was shown that the shipments in question, 4 and 10 carloads, respectively, were the only ones made, and in the second case that a future movement was not anticipated. In these cases reparation was based upon a distance scale adopted by southern carriers as a result of our finding in *International Agricultural Corporation v. L. & N. R. R. Co.*, 22 I. C. C., 488. By both record and precedent, therefore, it seems to me that we would be amply justified in here finding reasonable the subsequently established commodity rate of 21.5 cents yielding 31.4 mills per ton-mile and 88.47 cents per car-mile. For a similar distance the rate under the southern scale above mentioned would have been 11 cents.

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INVESTIGATION AND SUSPENSION DOCKET No. 1242.
GRAIN AND GRAIN PRODUCTS CHICAGO TO KANSAS
CITY.

Submitted December 13, 1920. Decided January 24, 1921.

Proposed increased local rates on grain and grain products, in carloads, from St. Louis, Mo., Peoria and Chicago, Ill., St. Paul, Minn., and other points to Kansas City, Mo.-Kans., found justified. Order of suspension vacated and proceeding discontinued.

G. A. Hoffelder and J. S. Adsit for respondents.

W. R. Scott for protestant and St. Joseph Grain Exchange of St. Joseph, Mo.

T. J. Slattery for Chamber of Commerce of Kansas City, Mo.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

HALL, Commissioner:

By schedules filed to become effective November 22 and December 6 and 7, 1920, respondents proposed to increase their local rates on grain and grain products, in carloads, to Kansas City, Mo.-Kans., from St. Louis, Mo., Peoria and Chicago, Ill., and St. Paul, Minn., and points in Missouri, Illinois, Wisconsin, Minnesota, and Iowa taking the same rates, and from other points in those states and the northern peninsula of Michigan. Upon protest of the Board of Trade of Kansas City the schedules were suspended until March 22, 1921. Rates will be stated in cents per 100 pounds. The proportional rates apply eastbound and only from Missouri River points; none applies westbound.

The points of origin are chiefly located in four groups. The St. Louis group comprises portions of eastern Missouri and south-eastern Iowa, and of western Illinois north of East St. Louis; the Peoria group a larger portion of central and northwestern Illinois and a number of points in Iowa west thereof; the Chicago group that part of Illinois north and east of the St. Louis and Peoria groups, and points in Wisconsin on and south of the line of the Chicago, Milwaukee & St. Paul from Milwaukee to Prairie du

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Chien; and the St. Paul group comprises points in southeastern Minnesota, generally south and east of Minneapolis and St. Paul, and points in Wisconsin immediately east of the Mississippi River between Prairie du Chien and Prescott. With a few exceptions it is proposed to increase the local rates from the St. Louis group 2 cents; from the Peoria and Chicago groups 2.5 cents; and from the St. Paul group 0.5 cent. The proposed increases from points outside of these groups range from 0.5 cent to 2.5 cents with a few increases of 3 and 4 cents.

Prior to June 25, 1918, separate commodity rates were published on wheat and on coarse grain, the latter generally being lower. Between Kansas City on the one hand, and on the other St. Louis, Peoria, Chicago, and St. Paul, which will be used as typical of the points here considered, the eastbound and westbound local rates were the same. Proportional rates were uniformly lower than the local rates. On that date, under general order No. 28 of the Director General of Railroads, wheat rates were increased 25 per cent and made applicable to other grain. In *Increased Rates, 1920*, 58 I. C. C., 220, a further increase of 35 per cent was authorized. The percentage increase of June 25, 1918, seriously disturbed the preexisting rate relationships between the various grain markets and the equalization of the combination rates by way of those markets from western producing fields to eastern consuming territories. Like results would have attended publication of the precise increases authorized in *Increased Rates, 1920*. In order to establish proper and satisfactory relationships, comprehensive revisions in the proportional rates were agreed upon between representatives of the grain markets and of the carriers, following the increases effective June 25, 1918, and again at a conference in August, 1920, after our decision in the case cited. The basis for the eastbound local rates decided upon after the earlier negotiations was 5 cents, and at the conference 7 cents, over the respective proportional rates. These adjustments were made effective December 1, 1919, and August 26, 1920, respectively. It was also agreed that the rates to St. Paul should be made the same as those to Chicago, but through oversight this was not done when the rates were increased August 26, 1920. This error, and a few others, in the eastbound local rates have since been corrected. The westbound local rates were not affected by these revisions excepting that under the revision effective December 1, 1919, the local rate from St. Paul to Kansas City was made the same as the eastbound local rate. The parity of the local rates in both directions had been maintained for many years preceding the readjustment of December 1, 1919.

The table below shows the present local rates in both directions, established August 26, 1920, or as later corrected, and the proposed westbound local rates here under suspension:

	Between Kansas City and—							
	St. Louis.		Peoria.		Chicago.		St. Paul.	
	East.	West.	East.	West.	East.	West.	East.	West.
Present.....	Cents. 22.5	Cents. 20.5	Cents. 25	Cents. 22.5	Cents. 27.5	Cents. 25	Cents. 27.5	Cents. 27
Proposed.....		22.5		25		27.5		27.5

Contemporaneously with the recent corrections in the eastbound local rates respondents increased their westbound local rates to Omaha, Nebr., and other Missouri River points to the same level as that proposed in the suspended schedules to Kansas City. These increased rates were neither protested nor suspended. It also appears that at the same time respondents reduced the local rates from a number of points to Kansas City and other grain markets, these reductions amounting to as much as 5.5 cents from certain points in Minnesota on the Minneapolis & St. Louis. The proposal to make the rates from St. Paul and Chicago to Kansas City the same is admitted by protestant to be proper.

Respondents contend that the increased rates under suspension were proposed to equalize market relationships throughout the western territory and to that end the local rates should be the same in both directions; that the westbound movement of grain to Kansas City is sporadic and in small volume as compared with the regular and heavy eastbound movement; that the eastbound local rates from Kansas City and other Missouri River points, although they do not move any grain from those points, fix the measure of the rates from stations immediately east thereof to St. Louis, Peoria, and Chicago under which a considerable grain tonnage moves; and that the maintenance of lower westbound local rates to Kansas City will be difficult to defend and will menace the level of the eastbound local rates. They say that, as the greater volume of the grain movement is eastbound, the westbound rates might properly be higher than the eastbound rates and cite *Railroad Commissioners of North Dakota v. N. P. Ry. Co.*, 53 I. C. C., 437, wherein we found that it was neither unreasonable nor unduly prejudicial for the carriers to maintain westbound rates on grain higher than the eastbound rates between certain points in Minnesota and Wisconsin and points in North Dakota.

In comparison with the proposed rates respondents cite equal or higher rates from grain-producing points in Iowa and Nebraska to Chicago, Peoria, and Omaha for comparable distances over single lines, and show that the proposed rates are the same as or lower than the intrastate scales for similar distances in Iowa and Missouri.

Protestant resists the proposed increases on the ground that practically all of the eastbound grain moves under the lower proportional rates; that grain originating east of Kansas City and shipped to that point frequently moves to destinations in southwestern states to relieve grain shortages caused by droughts and crop failures; and that the westbound rates to Kansas City should be considered as proportional rates applicable on traffic destined to points beyond. It is not suggested that the volume of grain moved westbound through Kansas City would justify the carriers in establishing proportional rates such as apply in the opposite direction.

Respondents assert that in times of drought and crop failure in the west it has been customary to establish emergency rates to move grain into the stricken territories. It also appears that several of the respondents maintain through rates¹ on grain from Peoria, Chicago, and St. Paul to points in the southwestern states under which transit is permitted at Kansas City, but protestant states that dealers there do not make much use of these through rates because the final destination of the grain is not known when it reaches Kansas City. Protestant shows that generally the eastbound rates are so adjusted that the combinations of the local rates from producing points to Kansas City plus the proportional rates beyond equalize the through rates to Chicago and other eastern destinations. This difference in the eastbound and westbound adjustment is due to the fact that proportional rates from Kansas City are 7 cents less than the local rates.

Protestant contends that Kansas City grain dealers should be able to draw grain from Illinois, Missouri, Iowa, and Minnesota and re-ship to points beyond at rates equal to those on which they draw grain from territory west of Kansas City and reship to points east thereof. Their inability to do this is apparently due to absence of proportional rates from Kansas City to points west, but that situation is not before us in this proceeding.

Protestant stresses the fact that since June 24, 1918, the percentages of increase in the rates on coarse grain have been greater than in the rates on wheat. Those increases were permitted under general

¹ By "through rates" is meant individual or joint rates, and not combination rates.
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order No. 28, and approved by us in *National Council Farmers' Assos. v. Director General*, 56 I. C. C., 399. Protestant also compares the ton-mile earnings under the proposed rates with slightly lower earnings under rates between western points for fairly comparable distances.

Neither respondents nor protestant produced any figures showing the tonnage of grain moving from St. Louis, Peoria, Chicago, or St. Paul to Kansas City. It is stated that some coarse grain moves from the Chicago group and some wheat and screenings from the St. Paul group. It is not claimed that the tonnage westbound equals or exceeds that moving eastbound at local rates, particularly that originating at stations in western Iowa and Missouri from which the rates to the eastern grain markets are made with relation to the local rates from the Missouri River points.

Upon this record we find that the proposed rates have been justified. Our order of suspension will be vacated and the proceeding discontinued.

60 I. C. C.

No. 4792 (Sub-No. 1).

PLYMOUTH COAL COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY.

Decided January 27, 1921.

Report on further hearing, 56 I. C. C., 699, modified as to the amount of reparation awarded.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our report on further hearing in this case, 56 I. C. C., 699, we found (a) that within the period April 9, 1910, to March 31, 1916, inclusive, the complainant paid, through the American Exchange National Bank of New York, its fiscal agent, to defendant, Delaware, Lackawanna & Western Railroad, freight charges aggregating \$345,820.87 on certain carload shipments of anthracite coal which had been transported by said defendant from Plymouth, Luzerne, and Kingston, Pa., to New York lighterage station, N. J., f. o. b. vessels; (b) that in the aggregate these shipments consisted of 187,389.93 long tons of prepared sizes and 34,800.36 long tons of pea size, and that the freight charges paid thereon were assessed at rates of \$1.58 and \$1.48 per long ton, respectively, which were found to have been unreasonable; (c) that freight charges aggregating \$318,695.88 would have accrued and become payable on these shipments if the rates therein found reasonable, \$1.45 and \$1.35 per long ton, respectively, had been applicable; (d) that by reason of having been required to pay the aforesaid charges at unreasonable rates the complainant, at the time of payment, suffered damages to the extent of the difference between the charges paid and the charges which it would have been required to pay at the rates therein found reasonable; and (e) that the complainant was entitled to recover from the Delaware, Lackawanna & Western Railroad the damages thus sustained, amounting in principal to \$27,124.99, with interest. An order was entered awarding reparation in accordance with the findings.

Upon further examination of the record we find that in the aggregate the shipments referred to consisted of 187,381.65 long tons of prepared sizes and 34,797.80 long tons of pea size; that freight charges aggregating \$318,680.42 would have accrued and become payable to I. C. C.

able on these shipments if the rates found reasonable, \$1.45 and \$1.35 per long ton, respectively, had been applicable; and that the damages which complainant is entitled to recover from the Delaware, Lackawanna & Western Railroad under our findings amount in principal to \$27,140.45. Our report on further hearing is modified to this extent and an amended order of reparation will be entered accordingly.

INVESTIGATION AND SUSPENSION DOCKET No. 1220.
TRACKAGE CHARGE ON LOADED CARS.

Submitted November 11, 1920. Decided January 24, 1921.

Schedules filed by the Chicago & West Ridge Railroad naming trackage charges ordered stricken from our files, the Chicago & West Ridge Railroad not being a common carrier subject to the interstate commerce act.

B. F. Weber and C. A. Shank for respondent.

A. R. Miller and W. R. Olsen for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

By schedules filed to become effective October 15, 1920, the respondent, Chicago & West Ridge Railroad, proposes to establish a trackage charge of \$3 "for each car under load set upon and each car under load taken from" its tracks. In a tariff previously filed by respondent a trackage charge of \$1 is named which it proposes to cancel. Upon protest of the Illinois Brick Company the schedules were suspended until February 12, 1921.

Respondent's tracks extend about 2.5 miles from Weber, Ill., a station beyond the city limits of Chicago, Ill., on the Chicago & North Western, hereinafter called the North Western, to Peterson avenue within those limits. Respondent does not own or operate any rolling stock or perform any service of transportation. It allows the North Western, its only connection, to use its tracks without charge. The trackage charge is imposed on the shipper. Respondent does not participate in any rates with other railroads, does not issue bills of lading or publish demurrage charges, and the only charge collected by it is the trackage charge, which thus constitutes its sole source of revenue.

Respondent was incorporated under the laws of the state of Illinois in 1893, and practically all shares of its capital stock are owned by its president. It has never been taxed as a railroad. The only industries of importance reached by it are two brick plants. The president of respondent is president of the company owning one of these plants. The other is owned by protestant.

The only tariffs filed with us by respondent are its trackage tariff above referred to, naming a charge of \$1 per car, and the tariff here under suspension seeking to increase this charge to \$3. Both contain the following: "Permission to use the tracks of the Chicago & West Ridge Railroad Company must be secured from Mr. B. F. Weber, President of the Chicago & West Ridge Railroad Company."

We find that respondent is not a common carrier subject to the interstate commerce act and that the suspended schedules must be stricken from our files. The same course will be taken as to its other tariff. An order will be entered accordingly and this proceeding discontinued.

60 I. C. C.

No. 11079.

GENERAL AMERICAN OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BEAUMONT, SOUR
LAKE & WESTERN RAILWAY COMPANY, ET AL.

Submitted April 30, 1920. Decided December 29, 1920.

Rates applicable on kerosene oil, in tank-car loads, from Electra and Brownwood, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export, found unreasonable. Reparation awarded.

E. N. Adams for complainant.*Robert Thompson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation engaged in the oil business at Tulsa, Okla., alleges that the rates charged by defendants on 15 tank-car loads of kerosene oil shipped during April and May, 1919, from Electra, Tex., and one tank-car load shipped May 7, 1919, from Brownwood, Tex., to Kassel, La., for export, and reshipped to Baton Rouge, La., for export, were unreasonable. Reparation and the establishment of reasonable rates for the future are asked. Rates will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Kassel is on the Mississippi River 58 miles southeast of Baton Rouge, and also on the line of the Louisiana Railway & Navigation Company, hereinafter called the navigation company. Electra is on the Fort Worth & Denver City about 26 miles west of Wichita Falls, Tex. The shipments from Electra moved as routed over the Fort Worth & Denver City to Fort Worth, Tex., Texas & Pacific to Shreveport, La., and the navigation company through Baton Rouge to Kassel, 704 miles. Brownwood is on the Gulf, Colorado & Santa Fe, 380 miles northwest of Beaumont, Tex., via that line. The shipment from that point moved as routed by complainant over the Gulf, Colorado & Santa Fe to Beaumont, Beaumont, Sour Lake & West-

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ern and New Orleans, Texas & Mexico to Baton Rouge, and the navigation company to Kassel, 626 miles. The consignee at Kassel refused to accept the shipments and they remained at that point for an average period of about eight days. Those from Electra were re-shipped to Baton Rouge over the navigation company, that from Brownwood was reconsigned to the same point, and all were subsequently exported. The demurrage charges which accrued at Kassel are not in issue. Charges were collected at a rate of 85.5 cents from Electra, the exact basis for which does not appear. The rate applicable was 71.5 cents, made up of a combination of commodity rates of 30 cents to Shreveport and 12 cents to Kassel, plus 4.5 cents, and the fifth-class rate of 25 cents for the back haul of 58 miles from Kassel to Baton Rouge. These shipments were therefore overcharged 14 cents per 100 pounds. Charges were collected on the shipment from Brownwood at the applicable combination rate of 69.5 cents, composed of commodity rates of 28 cents to Beaumont, Tex., and 12 cents to Kassel, plus 4.5 cents, and the fifth-class rate of 25 cents for the back haul from Kassel to Baton Rouge.

An export rate of 24.5 cents on kerosene oil, in carloads, from Electra and Brownwood to Kassel was contemporaneously in effect, but as the shipments were not exported from Kassel this rate was not applicable. The navigation company maintained a commodity rate of 7.5 cents from New Orleans to Baton Rouge, to which Kassel is intermediate, applicable only on intrastate shipments. On behalf of the navigation company it was stated that the Louisiana railroad commission required it to publish this rate from Baton Rouge to New Orleans, that it was subsequently made applicable in the opposite direction, and that little, if any, traffic has ever moved under it from New Orleans to Baton Rouge. A domestic rate of 34.5 cents also applied from Electra, Wichita Falls, and contiguous oil-producing points to Kassel over another route, and on December 31, 1919, was made applicable over the route of movement from Electra. No change has been made in the rate from Brownwood except as authorized in *Increased Rates, 1920, supra*.

Kerosene oil is rated fifth class under the governing western classification. The joint fifth-class rate from Electra and Brownwood to Kassel was 86.5 cents. The applicable combination commodity rates were, respectively, 53.75 and 51 per cent of the fifth-class rate. Defendants cite commodity rates on kerosene oil between points in Missouri, Oklahoma, and Texas on the one hand, and points in Louisiana and Texas on the other, and show that the percentage relationship of these rates to the fifth-class rates between the same points ranges from 43 to 69 per cent. From Ardmore, Tulsa, and Oklahoma City, Okla., to New Orleans, the fifth-class

rates are 77, 80.5, and 84 cents, respectively, and the commodity rate from each on kerosene oil is 37.5 cents, for an average distance of approximately 753 miles. The 37.5-cent rate thus yields an average of about 10 mills per ton-mile. The 84.5-cent rate from Electra to Kassel is 40 per cent of the fifth-class rate. Defendants assert that it is depressed to meet competition from other points of production, that the density of traffic in Texas is less than in Missouri and Oklahoma, and that commodity rates on kerosene oil to Louisiana points should bear a higher percentage relationship to fifth-class rates from Texas than from Oklahoma and Missouri.

Under a distance scale suggested as reasonable by defendants, the commodity rate applicable on kerosene oil from Kassel to Baton Rouge, 58 miles, would be 17.5 cents. This proposed rate, based on a loading of 54,000 pounds, the approximate average weight of the shipments here considered, would yield earnings of \$94.50 per car, \$1.629 per car-mile, and 6.03 cents per ton-mile. The 7.5-cent rate would yield \$40.50 per car, 69.83 cents per car-mile, and 2.58 cents per ton-mile.

The combination rate from Electra to Kassel was, as above indicated, somewhat out of line with the rate from Wichita Falls and other points in Texas and Oklahoma over other routes. In *Akin Gasoline Co. v. Director General*, 57 I. C. C., 136, we found that the rates on liquefied petroleum gas in tank cars from Electra to North Baton Rouge, La., were unreasonable to the extent that they exceeded those contemporaneously applicable from Wichita Falls to the same point. During the period of movement the fifth-class rate and the export rate on kerosene oil to Kassel were the same from Brownwood as from Electra, and no reason appears why the domestic rate from both should not be the same.

We find that the rates applicable were, are, and for the future will be unreasonable to the extent that they exceeded or may exceed 47.5 cents, composed of factors of 30 cents from Electra and Brownwood to Kassel, and 18 cents from Kassel to Baton Rouge for export, plus a single increase of 4.5 cents authorized by the Director General of Railroads under general order No. 28. The rates so found reasonable are subject to the further increases authorized in *Increased Rates, 1920, supra*. We further find that complainant made the shipments described, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined on the present record, and complainant should comply with rule V of the Rules of Practice.

An order in accordance with the foregoing will be entered. •

No. 10965.

ROBERTS COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY, ET AL.

Submitted October 19, 1920. Decided December 29, 1920.

Rate on cotton seed, in carloads, from Clarkton, Mo., to Cairo, Ill., found to have been unreasonable. Reparation awarded.

Ray Williams for complainant.

J. H. Cassidy, John F. Finerty, and Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by the Director General to the report proposed by the examiner.

Complainant, a corporation manufacturing cottonseed products at Cairo, Ill., alleges that the rate of 27.5 cents charged by defendants on a carload of cotton seed shipped October 22, 1918, from Clarkton, Mo., to Cairo was unjust and unreasonable to the extent that it exceeded 12.5 cents. We are asked to award reparation. Rates are stated in cents per 100 pounds.

The shipment weighed 66,000 pounds and charges thereon were collected in the sum of \$181.50, at the applicable class-B rate of 27.5 cents. It moved over the St. Louis-San Francisco, hereinafter called the Frisco, to Parma, Mo., and the St. Louis Southwestern, hereinafter called the Cotton Belt, to Cairo, 68.3 miles. Routing over these lines was specified by the shipper, but no rate or junction point was inserted in the bill of lading. Complainant explained that the shipment was routed over the Cotton Belt because its service was superior to that of other Frisco connections.

At the time of movement a joint commodity rate of 12.5 cents was applicable on cotton seed, in carloads, from Clarkton to Cairo over the Frisco to Delta, Mo., and the Missouri Pacific beyond; and also over the line of the same initial carrier to Chaffee, Mo., the Chicago & Eastern Illinois to Tamms, Ill., and the Mobile & Ohio beyond; and subsequently, on December 12, 1918, became applicable in connection with the Cotton Belt beyond Delta. The distance from

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Clarkton to Cairo over each of these three routes is substantially greater than over the route of movement. On the date of shipment the rate of 12.5 cents was also applicable over the Frisco to St. Louis, Mo., 208.5 miles, and to East St. Louis, Ill., in connection with the Terminal Railroad, 212 miles.

The following table shows the car-mile and ton-mile earnings under the 27.5-cent and 12.5-cent rates. Car-mile earnings are based on the weight of this shipment, 66,000 pounds.

From Clarkton to—	Via—	Distance.	Per car-mile.		Per ton-mile.	
			Rate, 27.5.	Rate, 12.5.	Rate, 27.5.	Rate, 12.5.
		Miles.			Cents.	Cents.
Cairo.....	Parma.....	68.3	\$2.66	\$1.20	8.05	3.65
Do.....	Delta ¹	112.2		.74		2.29
Do.....	Delta ²	183.9		.48		1.36
Do.....	Chaffee.....	110.3		.75		2.27
St. Louis.....	.....	208.5		.40		1.2
East St. Louis.....	St. Louis.....	212		.39		1.18

¹ Route, Frisco to Delta, and Missouri Pacific to Cairo.

² Route, Frisco to Delta, and Cotton Belt to Cairo.

On February 16, 1920, the class-B rate of 27.5 cents was increased to 31 cents, but the present rate is not assailed.

Defendants assert that there had been no prior shipments of cotton seed from Clarkton to Cairo at the class rate here under attack; that the rate of 12.5 cents was available to complainant over two routes almost as direct as that selected by it, and when subsequently established in connection with the Cotton Belt, as a concession to Cairo manufacturers, was not made to apply through Parma, but was limited to the route through Delta, in order to secure to the Frisco the longest possible haul. It appears that on traffic from points on the Frisco in southeastern Missouri, including Clarkton, the normal route is via Parma. They contend that the Frisco's rate for a single-line haul to St. Louis and East St. Louis is not fairly comparable with the rate for two and three line hauls to Cairo.

We find that the rate charged was unreasonable to the extent that it exceeded 12.5 cents; that complainant made the shipment as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$99, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11080.

ACME CEMENT PLASTER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PERE MARQUETTE
RAILWAY COMPANY, ET AL.

Submitted June 4, 1920. Decided December 29, 1920.

Rate applicable on gypsum hollow building blocks, in carloads, from Grand Rapids, Mich., to Asylum, Tenn., found not unreasonable. Complaint dismissed.

S. H. West for complainant.

H. A. Sleeper and *Edward D. Mohr* for defendants.

John F. Finerty for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by the Director General of Railroads, as Agent, to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation manufacturing gypsum products at Grand Rapids, Mich., and elsewhere, alleges that the rates assessed on two carloads of gypsum hollow building blocks, shipped May 27 and 28, 1919, from Grand Rapids to Asylum, Tenn., were unreasonable to the extent that they exceeded 25 cents per 100 pounds. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipments, which aggregated 164,300 pounds, moved over defendants' lines, and charges were collected at a combination commodity rate of 29 cents, based on the Ohio River. The rate is assailed by complainant upon the theory that it was a three-factor combination to each factor of which an increase of 2 cents had been added pursuant to general order No. 28 of the Director General of Railroads, which authorized an increase of 2 cents in plaster rates. Relying upon a tariff in force when the shipments moved, which provided that where through charges on certain commodities are

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made by combination of commodity rates the Director General's specific increases would be applied but once, complainant contends that it has been overcharged 4 cents per 100 pounds.

The combination applied was composed of a commodity rate of 14 cents to Jeffersonville, Ind., applicable on both gypsum and clay hollow building blocks or tile, and a commodity rate beyond of 15 cents which was applicable on the clay but not on the gypsum product. The rate from Jeffersonville applicable on gypsum hollow building blocks was the class-A rate of 26.5 cents, making the applicable combination 40.5 cents. The shipments were thus undercharged 11.5 cents per 100 pounds. The tariff providing that in constructing combination rates the specific increases made under general order No. 28 should be applied but once has no application here, as it is limited in its application to the commodities listed therein, not including hollow building blocks.

The record fails to show such a volume of movement as would justify us in prescribing a commodity rate south of the Ohio River, and complainant has furnished no evidence that the class-A rate of 26.5 cents was unreasonable as such. It is shown by an exhibit introduced by defendants that the latter rate compares favorably with class-A rates between other points in this territory for comparable distances.

Upon this record we find that the rate applicable was not unreasonable and the complaint will be dismissed.

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No. 11320.

EVERYBODY'S MERCANTILE COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 1766.

Submitted October 26, 1920. Decided December 29, 1920.

Rates on sugar, in carloads, from New Orleans, La., to Hospers, Iowa, and Alpena, S. Dak., found unreasonable but not unduly prejudicial. Reparation awarded. Fourth section relief denied.

P. R. Wigton for complainant.

J. N. Davis for defendants except the receivers of the Chicago, Peoria & St. Louis Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the purchase and sale of groceries at Sioux City, Iowa. By complaint seasonably filed it alleges that the rates charged on two carloads of sugar shipped in June and July, 1917, from New Orleans, La., to Hospers, Iowa, and Alpena, S. Dak., were unreasonable, unduly prejudicial, and in violation of section 4 of the act to regulate commerce. We are asked to award reparation and to establish rates not in excess of those contemporaneously maintained to more distant points over the same routes. Rates will be stated in cents per 100 pounds.

Hospers is a local point on the Chicago, St. Paul, Minneapolis & Omaha approximately 50 miles north of Sioux City. Alpena is a local point on the Chicago, Milwaukee & St. Paul 38 miles north of Mitchell, S. Dak., and 71 miles south of Aberdeen, S. Dak. The shipment to Hospers weighed 50,375 pounds, and moved from New Orleans June 13, 1917, by way of Morgan's Louisiana & Texas Railroad & Steamship line and the St. Louis, Iron Mountain & Southern, now the Missouri Pacific, to East St. Louis, Ill., thence by Chicago, Peoria & St. Louis, Chicago & North Western, and Chicago, St. Paul, Minneapolis & Omaha. Charges amounting to \$221.65 were collected, based on a combination rate of 44 cents, 60 I. C. C.

composed of a commodity rate of 17 cents to East St. Louis and the fifth-class rate of 27 cents beyond. The shipment to Alpena weighed 35,263 pounds, and moved from New Orleans July 28, 1917, over the Illinois Central to Chicago, thence Chicago, Milwaukee & St. Paul. Charges were collected thereon in the sum of \$216.17, based on a combination rate of 61.3 cents, composed of a commodity rate of 24.3 cents to Chicago and the fifth-class rate of 37 cents beyond.

When the shipment to Hospers moved, a commodity rate of 32 cents, minimum weight 33,000 pounds, applied to Sheldon, Ritter, and Sibley, Iowa, more distant points on the line of the Chicago, St. Paul, Minneapolis & Omaha, and to a large number of stations in northwestern Iowa in the immediate vicinity of Hospers. A like situation obtained at Alpena. A commodity rate of 41.4 cents, minimum weight 33,000 pounds, was contemporaneously in effect from New Orleans to Wolsey, Redfield, and Aberdeen, S. Dak., north of Alpena, and to Mitchell, Yankton, and other points in South Dakota south and east of Alpena. Defendants admit that the rates charged were unreasonable to the extent that they exceeded in each case those contemporaneously maintained to the points mentioned.

The departures from the long-and-short-haul rule of the fourth section were protected by Fourth Section Application No. 1766, portions of which were assigned for hearing with the complaint. No evidence was offered in justification of the maintenance of higher rates to Hospers and Alpena than to points beyond and the departures have been eliminated.

We find that the rates charged on the shipments to Hospers and Alpena were unreasonable to the extent that they exceeded 32 cents and 41.4 cents, respectively; that the shipments were made as described; that complainant paid and bore the charges thereon and was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation from Morgan's Louisiana & Texas Railroad & Steamship Company; Missouri Pacific Railroad Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and Wm. Cotter, receivers; Chicago & North Western Railway Company; and Chicago, St. Paul, Minneapolis & Omaha Railway Company in the sum of \$60.45, with interest, on the shipment to Hospers, and from the Illinois Central Railroad Company and Chicago, Milwaukee & St. Paul Railway Company in the sum of \$70.18, with interest, on the shipment to Alpena.

Orders awarding reparation and denying fourth section relief will be entered. The record will not support a finding of undue prejudice. No order for the future is necessary.

No. 11374.
CHAPIN-SACKS MANUFACTURING COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted September 30, 1920. Decided December 22, 1920.

Rate on ice in carloads from Lancaster, Pa., to Washington, D. C., found to have been unreasonable. Reparation awarded.

D. P. Hurley for complainant.

Adams Dodson, John F. Finerty, and Royal McKenna for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation manufacturing ice cream and ice at Washington, D. C., alleges by complaint seasonably filed that the rate of 18 cents per 100 pounds paid on 25 carloads of ice shipped between August 3 and 28, 1918, from Lancaster, Pa., to Washington, was in violation of sections 1 and 4 of the interstate commerce act and section 10 of the federal control act. We are asked to award reparation, including alleged excess war taxes. Rates will be stated in amounts per net ton except as otherwise indicated.

The shipments moved over the Pennsylvania Railroad a distance of 136 miles. Charges were collected at the sixth-class rate of 18 cents per 100 pounds, minimum 40,000 pounds. Defendant contends that these emergency shipments were not properly entitled to a commodity rate and that in the absence of substantial evidence showing the unreasonableness of the 18-cent rate no reparation should be awarded. There was contemporaneously in effect a combination commodity rate of \$3.20 composed of rates of \$1.80 from Lancaster to Baltimore, Md., and \$1.40 beyond. Effective August 12, 1918, a commodity rate of \$2.20 per ton, minimum 50,000 pounds, was established from Lancaster to Potomac Yard and Alexandria, Va., to which Washington is intermediate. The resulting departure from the long-and-short-haul provision of the act, was not protected by an

application for relief and was removed September 9, 1918, when the \$2.20 rate was made applicable to Washington.

We find that the rate assailed was unreasonable to the extent that it exceeded a rate of \$2.20 per ton, minimum 50,000 pounds; that complainant made the shipments and paid and bore the charges thereon at the rate herein found unreasonable; and that it has been damaged and is entitled to reparation in the amount of the difference between the charges paid and those which would have accrued at the rate and minimum weight herein found reasonable. The exact amount of reparation due can not be determined upon this record and complainant should comply with rule V of the Rules of Practice. We are without authority to order refund of war taxes.

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No. 11501.
CONSOLIDATION COAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted October 25, 1920. Decided December 29, 1920.

Rate on bituminous coal, in carloads, from mines near Gray, Pa., and Bell, Pa., to Washington, D. C., Uniontown, D. C., and Alexandria, Va., found unreasonable. Reparation awarded.

J. Walter Lord and Lord & Whip for complainant.

Royal McKenna for Director General.

Francis R. Cross for Baltimore & Ohio Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the examiner's proposed report.

Complainant, a corporation, by complaint filed May 28, 1920, asks for reparation on numerous carloads of bituminous coal shipped in March and April, 1918, from mines located near Gray, Pa., and Bell, Pa., to Washington, D. C., Uniontown, D. C., and Alexandria, Va., alleging that the rate charged was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded \$1.80 per gross ton. Rates will be stated in amounts per gross ton unless otherwise specified, and do not include increases under *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments, 103 in number, originated at mines located on a short detached portion of the Western Maryland in southwestern Pennsylvania, known as the Coal Run branch, which connects with the Baltimore & Ohio at Coal Junction, Pa., 2 and 4 miles from Gray and Bell, respectively. The tracks of the Baltimore & Ohio from Coal Junction to Rockwood, Pa., are used by the Western Maryland under a trackage arrangement to connect its Coal Run branch with its main line. The shipments were moved by the Western Maryland to Cumberland, Md., and the Baltimore & Ohio and its connections to destinations, approximately 220 miles. Of the shipments, 39 were consigned to complainant, 46 to the Washington Terminal Railway, and 18 to others.

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No joint rates were applicable and charges were collected at a combination of commodity rates of 70 cents per net ton to Cumberland, and \$1.80 beyond. Contemporaneously a rate of \$1.80 applied to these destinations from mines in this region on the Baltimore & Ohio, the Cumberland & Pennsylvania, the West Virginia Northern, and the Morgantown & Kingwood. This rate was increased to \$2.20 on June 25, 1918, under authority of General Order No. 28 of the Director General of Railroads. Effective September 23, 1918, the \$2.20 rate became applicable from mines on the Coal Run branch, and is satisfactory to complainant.

On shipments not consigned to complainant, the consignees other than the Washington Terminal paid the freight charges in the first instance, but were reimbursed by complainant to the extent that the charges exceeded \$1.80 per gross ton. The Washington Terminal is not a party to this record and no reimbursement has been made by complainant to that company.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.80 per gross ton; that, excluding the shipments consigned to the Washington Terminal Railway, complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined on this record and complainant should comply with rule V of the Rules of Practice.

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No. 11208.

CONDON BAKING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

Submitted September 25, 1920. Decided December 29, 1920.

Rates charged on hollow clay building tile and cement, in carloads, from North Charleston Port Terminals, S. C., to Charleston, S. C., during federal control found illegal. A reasonable rate determined and reparation awarded.

Harry F. Masman for complainant.

Royal T. McKenna for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the general bakery business at Charleston, S. C., by complaint filed February 4, 1920, alleges that the charges assessed on 10 carloads of hollow clay building tile and two carloads of cement shipped during September, October, and November, 1919, from North Charleston Port Terminals, S. C., hereinafter called the port terminals, to Charleston were illegal, and unjust and unreasonable in violation of section 10 of the federal control act. We are asked to award reparation. Complainant's claim for reparation on the last two shipments of tile was withdrawn at the hearing, leaving eight in issue.

The shipments originated at terminals built for embarkation purposes by the federal government at North Charleston, just north of Filbin Creek, about 6 miles from the city boundary of Charleston. The cars were moved without charge by engines operated in connection with the port terminals to interchange tracks of the North Charleston Terminal Company Railroad. Engines of the Atlantic Coast Line moved two of the cars to destination and the others to the Southern, which delivered them at its Line street station. The railroad lines were under federal control at the time of movement.

The distance was between 5 and 10 miles. The rates charged were intrastate distance class rates for that distance of 10 cents per 100
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pounds on the tile and \$11.50 per car of 20,000 pounds, excess in proportion, on the cement. At the hearing complainant's witness testified that charges on three of the eight carloads of tile had not been paid. The rates charged were published in tariffs of the Atlantic Coast Line and the Southern which also named intrastate distance commodity rates on cement of \$13 per car of 20,000 pounds, excess in proportion, for the same distance. Contemporaneously there was in effect an intraterminal rate of 40 cents per ton of 2,000 pounds, minimum \$6.50 per car, applicable on traffic transported between warehouses, industries, and wharves on defendants' lines and certain specifically named industries, not including the port terminals.

In the distance tariffs of the Atlantic Coast Line and the Southern, over which the shipments appear to have moved, the port terminals are not specified as stations, nor are they intermediate to any stations on those lines. The rates charged therefore were without tariff authority, and as it appears that there were no other rates applicable, it becomes necessary to determine what would have been reasonable rates. *Memphis Freight Bureau v. K. C. S. Ry. Co.*, 17 I. C. C., 90.

We find that the rates paid were illegal and that a reasonable rate on both tile and cement would have been the intraterminal rate of 40 cents per ton of 2,000 pounds, minimum \$6.50 per car, established effective February 9 and 29, 1920; that the shipments were made as described; that complainant paid and bore the charges on seven of the shipments and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record, and complainant should comply with rule V of the Rules of Practice. Charges on the three other shipments should be collected at the rate herein found reasonable.

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No. 11926.

R. A. CADE, INCORPORATED,

v.

PENNSYLVANIA RAILROAD COMPANY AND DIRECTOR
GENERAL, AS AGENT.

Submitted August 30, 1920. Decided December 29, 1920.

Storage charges collected at Jersey City, N. J., on flour for export found not unreasonable or otherwise unlawful. Complaint dismissed.

R. A. Cade for complainant.

Edwin A. Lucas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Upon consideration of the record we have reached a conclusion different from that recommended by him.

Complainant, a corporation engaged in the flour business at New York, N. Y., alleges that the charges collected by defendants for the storage at Jersey City, N. J., in January, 1919, of 300 sacks of flour were unjust and unreasonable. We are asked to establish reasonable charges for the future and to award reparation in the sum of \$17.64.

On November 21, 1918, complainant shipped from Millersburg, Pa., a carload of flour consigned to Manhattan piers, Jersey City, for export. The car arrived November 25, 1918. Half of the flour was removed by complainant December 7, 1918. The remaining 300 sacks, weighing 29,400 pounds, were placed in storage in accordance with the provisions of defendants' tariff.

On January 10, 1919, complainant tendered to defendants an order to deliver these 300 sacks to the steamship *Amelia*, January 15, 1919. Defendants declined to accept the order, as a strike of lightermen was in force in New York harbor. The strike, begun January 9, was terminated at midnight, Saturday, January 11, but lighterage operations were not resumed until Monday morning, January 13. Complainant did not again tender the original order for delivery after the strike terminated, but on January 15, on which date the steamship *Amelia* arrived in port, it tendered to defendants an order

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to deliver to the Bull-Insular line. This order defendants accepted, subject to delay, and made delivery on January 21.

After the free-storage period of 10 days, which expired December 10, storage charges of \$47.04 were collected on the 29,400 pounds of flour, in accordance with defendants' applicable tariff, as follows: December 11 to 30, 1918, 20 days at 1 cent per 100 pounds for each 5-day period; December 31, 1918, to January 19, 1919, 20 days at 2 cents for each 5-day period; January 20 and 21, 2 days at 4 cents.

There is no question of the reasonableness *per se* of the tariff charges; but complainant contends that if the first delivery order had been accepted by defendants, subject to delay, the storage charges would have ceased January 14. As the steamship *Amelia* did not arrive until January 15, it is clear that if the first order had been so accepted storage charges under the tariff would have accrued for the 5-day period commencing January 15 and ending January 19.

It is problematical whether delivery could have been made to the steamship *Amelia* on January 15, as she did not arrive until that date. On the same day complainant gave orders for a different delivery, and thereafter defendants would have been without authority to act upon the first order even if accepted when tendered. Nor is it disclosed that the change in orders was caused by the refusal of defendants to accept the first order. Irrespective, therefore, of any duty which may have rested upon defendants to accept the original order, the record does not disclose that any wrongful act of defendants was the proximate cause of accrual of the storage charges assailed, or that such charges would not have accrued if the original orders had been accepted subject to delay.

We find that the charges assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

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No. 11393.

BEST-CLYMER MANUFACTURING COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

Submitted October 13, 1920. Decided December 29, 1920.

Rate on apple pomace, in carloads, from Watsonville, Calif., to St. Louis, Mo., found unreasonable. Reparation awarded.

Thomas Bond for complainants.

John F. Finerty, John C. Brooke, and C. B. Ackerman, for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, the Best-Clymer Manufacturing Company and the Standard Syrup Company, corporations manufacturing jellies, with offices at St. Louis, Mo., allege that the class-B rate of \$1.69 per 100 pounds, minimum 24,000 pounds, charged by defendants on four carloads of apple pomace shipped during the period from November 26 to December 30, 1919, from Watsonville, Calif., to St. Louis, was unreasonable to the extent that it exceeded a rate of 94 cents, minimum 60,000 pounds, subsequently established. They also allege that the rate charged was unduly prejudicial in that lower rates on apple pomace were contemporaneously maintained over the same lines from stations in Washington and Oregon to St. Louis. We are asked to award reparation.

The shipments moved over lines under federal control by various routes. They weighed 225,869 pounds, and the freight charges collected at the applicable rate of \$1.69 aggregated \$3,817.18. One of the shipments weighed 69,360 pounds. Each of the other three weighed less than the subsequently established minimum of 60,000 pounds.

Apple pomace, a by-product of evaporated apples, valued at about 3 cents per pound is used solely in the manufacture of jelly. It is shipped in sacks and claims for loss or damage are negligible.

Early in August, 1919, the Best-Clymer Manufacturing Company sought the establishment on short notice of a commodity rate from 60 I. C. C.

Watsonville equal to that from Washington and Oregon points. On October 28, 1919, a freight-rate authority for a rate of 94 cents was issued, whereupon complainants contracted for the apple pomace which comprised these shipments. The 94-cent commodity rate was not made effective until December 31, 1919.

Based on the average loading of these shipments, 56,467 pounds, and the average distance over the routes of movement, 2,453 miles, the rate assailed yielded 38.9 cents per car-mile and 13.8 mills per ton-mile. Based on the same distance and the minimum weight, 60,000 pounds, the 94-cent rate would have yielded 23 cents per car-mile and 7.66 mills per ton-mile.

The record does not sustain the allegation of undue prejudice.

We find that the rate charged was unreasonable to the extent that it exceeded 94 cents per 100 pounds, minimum weight 60,000 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation—the Best-Clymer Manufacturing Company in the sum of \$1,272.41, with interest, and the Standard Syrup Company in the sum of \$200.79, with interest. We are without power to order refund of war taxes.

An appropriate order will be entered.

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No. 11516.

S. F. SCATTERGOOD & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MICHIGAN
CENTRAL RAILROAD COMPANY.

Submitted October 11, 1920. Decided December 29, 1920.

Transportation charges collected on a carload of live-stock feed shipped from Chicago, Ill., to Buffalo, N. Y., there stored, and thence reshipped to Montrose, Pa., and transit rule applicable at Buffalo, found not unreasonable. Complaint dismissed.

John K. Scattergood for complainants.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are Samuel F., John K., and William B. Scattergood, copartners engaged in the wholesale grain business at Philadelphia, Pa., under the name of S. F. Scattergood & Company. By complaint filed June 1, 1920, they allege that, by reason of the failure of the Michigan Central to advise them of the arrival of a shipment at Buffalo, N. Y., in time to comply with the tariff requirements necessary to secure the benefit of the transit arrangement on the basis of the through rate to ultimate destination, unjust and unreasonable charges were assessed on a carload of live-stock feed from Chicago, Ill., to Buffalo, there stored, and thence shipped to Montrose, Pa. Complainants ask for reparation and the establishment of reasonable transit rules for the future. Rates will be stated in cents per 100 pounds.

The shipment moved from Chicago on April 13, 1918, over the Michigan Central. It was consigned to S. F. Scattergood & Company, care of Union Dock & Warehouse Company, Buffalo, N. Y. On arrival in Buffalo, apparently on April 28 or 29, 1918, it was placed in storage in the warehouse of the Union Dock & Warehouse Company. On June 24, 1918, complainants received in the mail at Philadelphia, from the agent of defendants at Black Rock, N. Y.,

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a freight bill dated June 20, 1918, for the charges to Buffalo, based on a rate of 11.5 cents, accompanied by a "Notice of arrival of freight," which was merely a carbon copy of the freight bill. The freight bill and notice of arrival bore the notation "Transit privilege canceled." Upon receipt of the freight bill, complainants on the same day sent a check in payment thereof to the agent at Black Rock. The shipment remained in storage until July 17, 1918, was then forwarded to Montrose, and charges were collected at the local rate of 16.5 cents from Buffalo to Montrose. Complainants seek reparation to the basis of the joint rate of 19 cents in effect from Chicago to Montrose.

The provision of defendants' governing tariff under which the transit privilege was canceled provides:

Inbound carrier's paid freight bills, with duplicates, covering all commodities subject to the rules shall be recorded with the Central Freight Association Inspection and Weighing Bureau, within ten (10) days, (exclusive of Sundays and holidays), after the commodity is unloaded into the transit house, provided inbound carrier's freight bills have been presented for payment within five (5) days after such unloading, but failure of the inbound carrier to present freight bills within said five (5) days shall not operate to deprive the commodity of transit privilege if such failure is reported to the Central Freight Association Inspection and Weighing Bureau within the ten (10) day period.

Complainants do not maintain that such failure was reported to the inspection and weighing bureau within the required period. It is testified on their behalf that it was the practice of defendants to advise them by telegram at Philadelphia of the arrival of shipments of grain products at Buffalo. They contend that it was the duty of defendants, assumed by reason of the imposition of the tariff charge, to advise them promptly of the arrival of the shipment at Buffalo, and that the failure of defendants to give notice of arrival deprived them of opportunity to comply with the requirements necessary to secure application of the joint rate to final destination. They further maintain that the rule is unreasonable in that it is impossible of fulfillment by parties not located at Buffalo whenever the carrier fails to give prompt notice of arrival.

The tariff containing the rule attacked contains a further provision that all necessary arrangements for storing or otherwise handling grain, grain products, or feed at warehouses, including loading in and unloading out, must be made with such warehouses by shippers or owners. Such arrangements had been made by complainants with the Union Dock & Warehouse Company and included an agreement that the warehouse company would advise complainants of the arrival of freight. Complainants contend that the warehouse company was not their agent, as it is said to be

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controlled by the railroad. It appears, however, that by the arrangements made they recognized the warehouse company as their agent; not only for storing, but for receiving the shipment. Delivery to the warehouse, therefore, constituted delivery to complainants.

Upon the record we find that the transportation charges collected and the transit rule attacked were not unreasonable.

An order dismissing the complaint will be entered.

No. 11437.

WASHBURN-CROSBY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO GREAT
WESTERN RAILROAD COMPANY, ET AL.

Submitted October 11, 1920. Decided December 29, 1920.

Rule in defendants' tariffs providing that demurrage charges will begin to run from the first 7 a. m. after receipt of cars from a switching line found unreasonable as applied to shipments received from the switching line between 4 p. m. and 7 a. m. Reparation awarded.

E. C. Best and C. C. Crellin for complainant.

Richard L. Kennedy for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, by complaint seasonably filed, attacks as unreasonable certain demurrage charges collected by the Director General of Railroads, hereinafter termed defendant, on 58 cars of flour and other grain products shipped from complainant's mills, at Minneapolis, Minn., to various destinations, during the period from February 22, 1918, to January 17, 1919. We are asked to award reparation.

The shipments were loaded at night on complainant's private sidings on the line of the Railway Transfer Company in Minneapolis, and were received by defendant from that company immediately following their loading, between the hours of 9.30 p. m. and 5.45 a. m., or on Sunday, which day, under the tariff rules, is not counted in computing demurrage. Defendant's demurrage tariffs provided that cars received from switching lines and held for billing instructions

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were subject to demurrage charges from the first 7 a. m. after the cars were received by it until billing instructions were received, with no free-time allowance. It is not customary for switching lines to accept complete billing instructions, and it is therefore necessary to give such instructions to the line-haul carriers. Complainant did not, within the required time, furnish billing instructions for the cars here considered, and demurrage charges were collected in the sum of \$174.

On December 1, 1919, the rule was amended so as to provide that cars received by defendant between 4 p. m. and 7 a. m. would not be subject to demurrage if forwarding directions were received prior to the following 12 o'clock noon. This amended rule is still in effect. Complainant delivered to defendant forwarding directions for the shipments here considered by the noon following the delivery of the cars, or by Monday noon when the cars were delivered to defendant on Sundays.

We find that the rule under which the demurrage charges were collected was unreasonable as applied to the shipments here described; that complainant made the shipments and paid and bore the demurrage charges thereon; that it has been damaged thereby; and that it is entitled to reparation in the sum of \$174, with interest.

An order awarding reparation will be entered.

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No. 11509.
HENDERSON LUMBER COMPANY
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted October 25, 1920. Decided December 29, 1920.

Estimated weight of 45 pounds per post as applied to a carload shipment of standard 6-foot pit posts from Newark, W. Va., to Benicoll, Pa., not shown to have been unreasonable. Complaint dismissed.

J. F. Henderson for complainant.

C. R. Webber for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those recommended by him.

Complainant is J. F. Henderson, engaged in the lumber business at Pittsburgh, Pa., under the trade name of Henderson Lumber Company. By complaint seasonably filed he alleges that the charges collected by defendants on a carload of pit posts, otherwise known as mine props, shipped November 27, 1917, from Newark, W. Va., to Benicoll, Pa., were unjust and unreasonable in that they were based on an estimated weight of 45 pounds per post, which was in excess of the average actual weight of such posts. Reparation is sought. Complainant does not attack the use of estimated weights, but contends that this estimated weight, 45 pounds per post, was unreasonably high as applied to his shipment and should not have exceeded 34.85 pounds.

The shipment, consisting of 2,000 pit posts, moved as routed over the Little Kanawha to Parkersburg, W. Va., the Baltimore & Ohio to Bruceton, Pa., and the West Side Belt beyond. Freight charges in the amount of \$109.35 were collected, based on an estimated weight of 90,000 pounds at a combination rate of \$2.43 per net ton. The rate applicable was a combination rate of \$2.18 per net ton, composed of a joint commodity rate of \$1.73 from Newark to Bruceton and a commodity rate of 45 cents beyond. Defendants admit that the

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shipment was overcharged \$11.25 and have refunded a part of this amount. Prompt refund of the balance should be made. The rates are not here in issue.

Defendants' tariff contained a table of estimated weights to be applied on various commodities. This table provided for estimated weights on wooden mine props ranging from 25 pounds for 3.5-foot props to 110 pounds for 10-foot props. The weight for 6-foot props was 45 pounds. The shipment was billed as 6-foot pit posts.

Complainant contends that the average weight of a standard 6-foot pit post is considerably less than 45 pounds. He testified to having made numerous shipments of pit posts, chiefly oak, chestnut, and maple, some round and some split, and that, taking into consideration the high percentage of bark and sapwood in the small timber and the partial drying of the posts in the open before shipment, a reasonable estimated weight would be 5 pounds per board foot. He also testified that a standard 6-foot pit post contains on an average between 6 and 7 board feet and would weigh about 35 pounds. He submitted the average weights on 87 carloads of 6-foot pit posts said to be of the same character as those contained in the shipment in question. These averages are based on the scale weights of shipments made during the month of November for three consecutive years, as follows:

Year.	Number of carloads.	Average weight per post
		Pounds.
1916.....	28	34.5
1917.....	135	33.7
1918.....	26	32.6
Three-year period.....	87	33.5

¹ Includes the carload under consideration at the estimated weight of 45 pounds.

It was also shown that the average weight on 23 carloads of posts from the same district as this shipment did not differ materially from the general average. Complainant insists that a reasonable basis for the assessment of charges on this shipment is the average weight per post on two carloads of similar material, cut by the same gang of workmen during the same month. This average is 34.85 pounds, based on scale weights.

In support of the reasonableness of the estimated weight of 45 pounds defendants submitted the scale weights of a number of shipments of mine props of various sizes, including three carloads of 6-foot props which averaged 43.9 pounds per prop. These three carloads all originated at the same point. There is no evidence as to their exact character. Six cars of 6.5-foot props were shown to have

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averaged 54.8 pounds per prop. At the same rate per lineal foot 6-foot props would average 50.58 pounds. It was testified for defendants that the estimated weights contained in the tariff were based on the average weight of mine props from West Virginia, Maryland, and Pennsylvania, and covered every season of the year. Defendants admitted that the shipment passed at least one scale station, and the inspector of scales and weights for the Baltimore & Ohio testified that he did not know why the shipment had not been weighed. It is contended that a great deal of inconvenience and delay would result if every shipment were weighed, and that for this reason the estimated weights were established.

As to the shipment here in controversy there is no evidence to show the form of the posts, whether round or split, their actual weight, or the kind of wood or its condition.

The application of estimated weights, where for practical reasons it is inconvenient or impossible to ascertain actual weights, benefits both shipper and carrier, and is not to be condemned except where it appears that the estimate is not fairly representative of the actual weights. Complainant's evidence relates solely to his November shipments. He testified that in the spring of the year these posts contain more sap and weigh more; that considerable variation in weight results from different ways of cutting; and that the variation might amount to 10 or 15 pounds per 6-foot post. The record does not establish that these shipments are fairly representative of all shipments moving in this territory. The tariff estimates are intended to be representative of shipments moving throughout the year and are published "for use only when scale weight or other reliable weight of property is not ascertained." No weight of the shipment here considered was ascertained, and a finding that the tariff estimate of 45 pounds per post was unreasonable is not warranted.

We find that the charges applicable are not shown to have been unreasonable. The complaint will be dismissed.

No. 10751.

L. H. MILLER

v.

DIRECTOR GENERAL, AS AGENT, AND NORTHERN
PACIFIC RAILWAY COMPANY.

Submitted April 19, 1920. Decided January 24, 1921.

1. Shipments of logs from a logging spur near Wilkeson, Wash., to Tacoma and Kenndale, Wash., moving intrastate during the period of federal control and prior to January 18, 1919, found overcharged, and reparation awarded.
2. Shipments moving intrastate during the period of federal control on and subsequent to January 18, 1919, found undercharged, and applicable rate found unreasonable. Waiver of undercharges authorized.

Joseph N. Teal and William C. McCulloch for complainant.

John F. Finerty for Director General of Railroads.

D. F. Lyons, L. B. da Ponte, and B. W. Scandrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS CLARK, MEYER, AND AITCHISON.

By DIVISION 1:

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by the complainant and the case was orally argued before us.

Complainant, operating as the International Spar Company, is engaged in the manufacture of spars at Kenndale, Wash. By complaint seasonably filed, as amended, he alleges that the rates charged on numerous shipments of long logs, in carloads, shipped between August 28, 1917, and March 27, 1919, both inclusive, to Tacoma and Kenndale, Wash., from a logging camp on the Wilkeson branch of the Northern Pacific near Wilkeson, Wash., were excessive and unreasonable. In the event that we should find that the rates which complainant contends to have been applicable were restricted to the movement of saw logs, we are asked to find such restriction unreasonable and to order its removal. Complainant prays for reparation and the establishment of reasonable rates for the future. Rates will be stated in cents per 100 pounds unless otherwise specified.

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The movement of these shipments was entirely within the state of Washington. By proclamation of the President the federal government, as of noon December 28, 1917, assumed possession and control of the various transportation systems within the continental United States, the proclamation stating that "for the purpose of accounting, said possession and control shall date from 12 o'clock midnight on December 31, 1917." Under section 206(c) of the transportation act, 1920, it is our duty to entertain complaints praying for reparation on account of the collection by or through the President during federal control of charges in violation of the interstate commerce act. This report will cover only the shipments on which charges were collected and which were delivered on or subsequent to January 1, 1918.

The shipments originated on a spur track between South Prairie, Wash., and Wilkeson, and moved over the Northern Pacific to Kenneydale, a distance of about 45 miles, and to Tacoma, approximately 26 miles. They consisted of the trunks of fir trees, not in any wise manufactured, but from which the tops and branches had been removed. Complainant billed, or attempted to bill, the shipments as logs, but the billing, as changed by defendants, described them under various designations, including timbers and rough spars. These tree trunks as shipped averaged 90 feet in length, and, except in a few instances where two cars were used, each shipment required three cars. After reaching destination they were placed in a log dump and approximately one-half were sold to sawmills, the remainder being used in the manufacture of ships' spars. Various methods of manufacture are employed, but it appears that complainant's spars were hewn by hand from selected stock and were not manufactured in a sawmill.

Charges were collected at rates of 4 cents prior to June 25, 1918, and 5 cents on and after that date, which were defendants' mileage rates for distances of over 25 and not over 45 miles applicable on lumber, shingles, and timbers of fir and other enumerated woods, and on poles, piling, and various other commodities included in the lumber list. This lumber rate was applied on complainant's shipments apparently upon the theory that the commodity transported constituted timbers.

During the period covered by the movement of these shipments defendants had in force a tariff entitled "Local and Joint Freight Tariff Naming Commodity and Distance Rates on Saw Logs * * *." Rule 20 of this tariff reads as follows:

The term "Saw Logs," as used in this tariff, applies only to logs manufactured at saw mills into lumber and shingles.

This is a sectional tariff. Section 1 names specific rates in numerous items on "saw logs" between points of origin and destination named therein. Section 2 names mileage rates—

"applying on Logs, (except Hardwood) in carloads, minimum 7,000 feet per car, between all Main and Branch line stations on the Northern Pacific Ry. in the state of Washington west of and including Palmer Jct., Wash.,"

which includes the stations here considered. By reissue of the tariff effective January 18, 1919, the term "logs" was changed to "saw logs." The rates named in section 2 of this tariff for the distances these shipments moved, 26 and 45 miles, were, per 1,000 feet, \$1.45 and \$1.60, respectively, prior to June 25, 1918, and \$1.80 and \$2, respectively, on and after that date.

Complainant contends that the commodity transported consisted of logs and not of timbers. Defendants' witness defines timbers as "any body or stem of a tree not properly designated as a saw log," and contends that, as the commodity involved did not enter a saw-mill for manufacture into lumber, the lumber rate was applicable in accordance with defendants' usual practice of applying the lumber rates on poles, boom sticks, and other forest products not converted into lumber. A log is defined by Webster as "a bulky piece or length of unshaped timber; especially a tree trunk or a length of a trunk or branch trimmed of offshoots and ready for sawing." In the generic sense "timber" includes trees, standing or felled, collectively or singly. "Timbers" in common usage describes wood squared, sawed, or otherwise prepared for use, especially larger forms of lumber adapted for beams, scantling, etc.

Complainant's shipments consisted of "logs" in the ordinary sense of the word. The intention of defendants to limit to saw logs the application of the rates of \$1.45, \$1.60, \$1.80, and \$2 on logs, as indicated by the title-page of the tariff, does not render inapplicable the definitely established rates in section 2 of the tariff on "logs," and these rates were applicable until January 18, 1919.

Logs were rated class C in the governing western classification, and the applicable class-C mileage rate effective between January 18 and March 27, 1919, for 45 miles was 12.5 cents. The shipments transported during this period all moved to Kennydale. These shipments were undercharged.

In support of his contention that the rates charged were unreasonable, complainant cites rates on logs between points in Washington which are lower for comparable distances. Defendants contend that the saw-log rates are unduly low, and urge that both prior to the publication of rule 20 above mentioned and subsequent thereto the lumber rates have applied on posts, poles, piling, and timbers, in the bark or peeled. In *Rates on Lumber and Lumber Products*, 52

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I. C. C., 598, 625, and *National Pole Co. v. A., T. & S. F. Ry. Co.*, 55 I. C. C., 625, we recognized the propriety of assessing on long lumber, timbers, poles, and piling too long to be loaded on a single car, rates as high as those maintained on lumber in single cars.

We find that the rates collected on the shipments which moved prior to January 18, 1919, were excessive and illegal to the extent that they exceeded the following rates per 1,000 feet: To Tacoma, \$1.45 prior to June 25, 1918, and \$1.80 on and after that date; to Kenneydale, \$1.60 prior to June 25, 1918, and \$2 on and after that date. We further find that complainant made the shipments as described during the above period and paid and bore the charges thereon at the rates herein found to have been excessive and illegal; that he has been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates herein found legal and applicable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. We further find that the rate applicable on the shipments that moved on and after January 18, 1919, was unreasonable to the extent that it exceeded 5 cents per 100 pounds. As the charges collected on the latter shipments were based on the rate herein found reasonable, the undercharges on these shipments may be waived.

Our jurisdiction over intrastate rates, except under circumstances not here present, is confined to the period of federal control which terminated on March 1, 1920. Therefore no order for the future will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1214.
COAL FROM KENTUCKY, TENNESSEE, AND VIRGINIA
TO NORTHERN AND NORTHWESTERN POINTS.

Submitted December 9, 1920. Decided January 26, 1921.

1. Proposed increased rates on coal from points on the Louisville & Nashville Railroad in eastern Kentucky and Tennessee and southwestern Virginia to points in central territory found justified with the exception of those to St. Louis, Mo., and certain intermediate points, to Jeffersonville and New Albany, Ind., and to certain other points.
2. Proposed increased rates on coal from the same points to St. Louis, Mo., and certain intermediate points, to Jeffersonville and New Albany, Ind., to certain other points in central territory, and to points in the west and northwest, found not justified.

Nelson W. Proctor and *William A. Northcutt* for Louisville & Nashville Railroad Company, and *A. L. Holton* for Interstate Railroad Company, respondents.

C. D. Boyd for Harlan County Coal Operators Association, Hazard Coal Operators Exchange, and Southern Appalachian Coal Operators Association; *Frank Lyon* and *W. A. Prinsen* for Northwestern Coal Dock Operators Association; *Clifford H. Browder* and *W. D. McHugh* for International Harvester Company; *Clifford H. Browder* for Wisconsin Steel Company; *L. G. Macomber* for Toledo Chamber of Commerce; and *W. J. Womer* for Chicago Wholesale Coal Shippers Association and Northwest Traffic & Service Bureau, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS CLARK, HALL, AND EASTMAN.

EASTMAN, *Commissioner*:

By schedules filed to take effect October 5, 1920, the Louisville & Nashville Railroad Company, herein referred to as respondent, and its connections, propose to increase the rates on coal from districts served by respondent in eastern Tennessee, eastern and southeastern Kentucky, and southwestern Virginia, to points in central territory and to certain other points in Illinois, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Upon protests of the Harlan County Coal Operators Association, Hazard Coal Operators Ex-

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change, and Southern Appalachian Coal Operators Association, voluntary associations of operators in the affected districts, and of the Northwest Traffic & Service Bureau, representing retail coal dealers in Minnesota, Iowa, North Dakota, South Dakota, and Missouri, the operation of these schedules was suspended until March 4, 1921. Subsequently protests were filed on behalf of the Northwestern Coal Dock Operators Association, whose members are purchasers and shippers of lake-cargo coal from mines in the affected districts, and of various consumers of and retail dealers in coal.

The originating points comprise four numbered groups, hereinafter collectively referred to as respondent's groups. Groups 1, 3, and 4 include the Kentucky and Tennessee mines and group 2 those in Virginia. The Kentucky and Tennessee mines are in the Elkhorn and Jellico districts of the so-called inner Crescent group, which extends from western Pennsylvania through West Virginia into eastern Kentucky and Tennessee. The Virginia mines are in the neighboring Stonega district of the so-called outer Crescent group, which consists of a parallel chain of coal-mining districts lying to the eastward of the inner Crescent group. The map accompanying our report in *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66, may be referred to for the location of the various districts mentioned herein.

For convenience in considering this case the destination territory may be divided into two groups, one of which includes points in Illinois, except those in the northern portion of the state, and points east thereof, hereinafter called central territory, to which joint rates are in effect, as a general rule, from all districts in the Crescent groups. The other group embraces northern Illinois, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin, hereinafter called northwestern territory. We are, however, concerned herein with only the comparatively few destinations in northwestern territory to which joint rates apply from respondent's groups. From other Crescent districts, the rates to this territory are combinations on Chicago or Peoria, Ill., St. Louis, Mo., Milwaukee, Wis., or upper Mississippi River crossings, and to most points combination rates also apply from respondent's groups; but such rates are not here in issue.

In *Increased Rates, 1920*, 58 I. C. C., 220, we designate certain rate groups or territories and authorized different percentages of increase between points within the various groups, viz, eastern group, 40 per cent; southern group, 25 per cent; western group, 35 per cent; mountain-Pacific group, 25 per cent. We also found:

Joint or single line through rates between points in one group and points in other groups should be increased 33½ per cent.

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Concerning rates on coal, we stated at page 248:

Carriers serving the Pennsylvania-Ohio-West Virginia coal fields propose to continue the existing differentials in coal rates, and have worked out a scheme of rates to effect that result. Carriers in the southern and western groups propose to ignore existing differentials in coal rates within those groups. The proposal of the eastern lines to preserve existing relationships is approved, and carriers in the other groups should work out a similar plan for restoring the relative adjustments of coal rates now obtaining in those groups. An effort should be made promptly to devise rates in each group that will yield, as nearly as practicable, the same revenue in the aggregate as would be afforded by a straight percentage increase on the bases herein approved.

Following our report in that proceeding, rates on coal from the basic inner Crescent districts in the eastern group to central territory were, on August 26, 1920, increased by 40 per cent. The rates from other inner Crescent districts in the eastern group and from outer Crescent districts in the eastern group were adjusted differentially with respect to the rates from the basic inner Crescent districts. To points in northwestern territory the combination rates were increased by 40 per cent to the gateways and by 35 per cent beyond.

The mines in the Crescent districts served by respondent are in the southern group. Effective August 26, 1920, the through rates on coal from these mines to central territory, which is in the eastern group, and to northwestern territory, which is in the western group, were increased uniformly by 33½ per cent. The application of a different percentage of increase from that observed in making the present rates from the inner Crescent districts in the eastern group disrupted certain long-established relationships between respondent's mines and competing mines in the eastern group, to the disadvantage of the latter. The uniform percentage increase from respondent's four originating groups also destroyed the differential relationship formerly existing between them. By the schedules under suspension respondent proposed to increase the rates from its basic groups in effect prior to August 26, 1920, by 40 per cent to central territory and, where joint rates are in effect, by 40 per cent to northwestern territory, and to increase the rates from its other groups so as to restore the relationship formerly existing between them and the basic groups. The proposed adjustment would increase the rates in effect prior to August 26, 1920, to that portion of central territory east of the Indiana-Illinois state line by 40 per cent from the Kentucky and Tennessee mines and by 40 per cent less 6 cents per ton from the Virginia mines, and to central territory west of that line by 40 per cent from the Virginia and group-4 Kentucky mines and by 40 per cent plus 6 cents per ton from the other Kentucky and the Tennessee mines.

Respondent asserts that in proposing the increased rates, it acted in accordance with its understanding of our findings in *Increased*

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Rates, 1920, supra, and in pursuance of a broad general policy to restore, so far as practicable, the group relationships existing prior to August 26, 1920, (1) as between its groups and (2) as between such groups and mines served by the Chesapeake & Ohio Railway in the Kanawha district. It relies upon this claimed relationship and upon comparisons with the rates from the Kanawha district to show that the proposed rates are just and reasonable.

Protestants admit the propriety of restoring any fixed and recognized differentials or relationships, but contend that to northwestern territory and to many points in central territory no such relationships have existed or exist, and that to a large proportion of the remaining points in central territory the increases proposed disregard certain long-standing relationships of origin and destination points that have been prescribed or approved by us.

The general basis for rates from respondent's groups has been to apply the Kanawha district rates from the eastern Kentucky and Tennessee mines to points in central territory east of the Indiana-Illinois line and on and west of the line of the Cleveland, Cincinnati, Chicago & St. Louis Railway extending from Cincinnati, Ohio, to Cleveland, Ohio, including Chicago, Ill., and rates 15 cents per ton higher from the Virginia mines. To other points in central territory west of the Indiana-Illinois line the rates from the Virginia mines and from group-4 Kentucky mines have been made the same as those from the Kanawha district and from group-1 and group-3 mines, 15 cents per ton lower. To points in the northwestern territory the normal basis from respondent's groups, and also from the Kanawha and other inner Crescent districts, is said to be the lowest combination via the route of movement. As hereinafter explained, however, these general bases have not been uniformly applied.

The present differential between the rates from the Virginia group and those from the Kentucky and Tennessee groups to central territory is 20 cents per ton. Protestants do not question the propriety of restoring the former differential of 15 cents prescribed in *Stonega Coke & Coal Co. v. L. & N. R. R. Co.*, 39 I. C. C., 523, as proposed in the suspended schedules. Nor do they oppose respondent's endeavor to establish the same rates from its basic groups as from the Kanawha district, *where that relationship formerly existed*, provided the former relation of these rates to those from the Ohio district is also restored. They contend, however, that unjustifiable increases in the rates from the lower-rated groups would result from treating the higher-rated groups as the basic groups and thereby increasing the rates from the former by 40 per cent plus 6 cents per ton, as respondent proposes to do in the case of rates to points west of the Indiana-Illinois state line. They suggest that the rates

from the lower-rated groups should have been increased by 40 per cent and a differential of 15 cents added thereto in fixing the rates from the higher-rated groups.

The plan for readjusting rates on coal proposed by the carriers in the eastern group and referred to in *Increased Rates, 1920, supra*, provided for increasing by 40 per cent the rates from the inner Crescent districts and adding the resulting amount of increase per ton to the rates from related districts, thereby preserving the former differential relationships. From the adoption of this plan an increase of less than 40 per cent from some districts and of more than 40 per cent from others would necessarily result. The Kanawha district, being in the inner Crescent group, was subjected to an increase of 40 per cent. In selecting basic groups for a corresponding increase respondent observed the general basis that has been followed for many years.

Protestants support their contention that the claimed relationship between the rates from respondent's groups and those from the Kanawha district is very largely assumed by citing numerous discrepancies between the former rates from these respective districts to points in central territory, and the fact that, with few exceptions, no joint rates have been or are maintained by the Chesapeake & Ohio from the Kanawha district to points in northwestern territory. They urge that the proposed increased rates based on this assumed relationship would be unreasonable and unduly prejudicial in comparison with the rates from competing districts in Ohio and in southern Illinois.

The relative adjustment is well illustrated by the following analysis of the suspended schedules. Of the 6,867 rates named therein from respondent's basic groups, 4,473, or about 65 per cent, are the same as the present joint rates of the Chesapeake & Ohio from the Kanawha district; 357, or 5 per cent, are lower; 383, or 6 per cent, are higher; and 1,654, or 24 per cent, are to points to which no joint rates are in effect from the Kanawha district. Of these latter rates, 1,109, or 16 per cent of all the rates named, are to points in northwestern territory; 144, or 2 per cent, to points in central territory east of the Indiana-Illinois line; and 401, or 6 per cent, to points in central territory west of that line. Approximately 5,758 destinations to which joint rates are published in the suspended schedules are in central territory. To 1,285, or about 22 per cent, of them the proposed rates from respondent's basic groups and those from the Kanawha district are not the same.

The departures from the general basis of equality disclosed by the above analysis result from various causes; among others, the observance of the long-and-short-haul rule, the application at certain

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points in the southern part of central territory of combinations on Ohio River crossings as maxima, the failure of either the respondent or the Chesapeake & Ohio to publish joint rates to certain points in central territory, the establishment by the respondent of joint rates to certain points in northwestern territory lower than the combination rates applicable from the Kanawha district, and the maintenance of different rates from respondent's groups than from the Kanawha district to points in central territory where differences in distances or other conditions are deemed controlling. Departures of the kind last described are illustrated by the rates to St. Louis and intermediate points in southern Illinois, which are somewhat lower from respondent's groups than the through rates from the Kanawha district, and by the rates to the eastern portion of central territory and on lake-cargo coal, where the situation is the reverse.

The maintenance of unequal rates from these two districts to less than 25 per cent of the points in central territory named in the suspended schedules is a departure to that extent from the general basis of rate equality, but does not refute respondent's contention that there has been and is a fixed and well-recognized relationship between the rates to that territory. Such a relationship does not necessarily find expression in equal rates. The record shows that since 1900, when the mines in respondent's groups first sought to market their coal in central territory, there has been active competition between them and the mines in the Kanawha and other inner Crescent districts. That the carriers and producers operating in these several districts are active competitors was also shown in *Bituminous Coal to C. F. A. Territory, supra*, in which we said at page 80:

The testimony, which in this respect is not successfully controverted, shows that for many years the constituent districts of each of the respective Crescent groups have been considered as one extensive group for the purpose of making rates to central freight association territory. The rates from all districts in the entire producing area—Ohio and the Crescent—are intimately related and constitute one great rate structure. The geographical situation and competitive influences, both as between carriers and as between shippers from the different origin districts, have resulted in equal rates from all the districts in each respective general group to all central freight association territory, except in some instances, where, because of their proximity, some consuming markets are naturally tributary to particular origin districts. * * * Because of this intimate rate relationship, it was testified, a change in rate from one point in a group will automatically operate to make a like change in the rates from other parts of the group.

In that case we prescribed a differential of 40 cents per ton between the rates from the Ohio districts and those from the inner Crescent group to the so-called affected area in central territory, viz, points in the northwestern quarter of Ohio, the northeastern quarter of Indiana, and the lower peninsula of Michigan. Pro-

testants' contention that the proposed rates disregard certain relationships prescribed by us relates largely, if not solely, to the failure of respondent, and of the eastern lines as well, to maintain that differential and also the differentials fixed in that case as between Toledo, Ohio, and certain destinations in Michigan.

The present rates from the Kanawha district and the rates proposed by respondent from its basic groups to points in Ohio in the "affected" area are 56 cents per ton higher than the intrastate rates from the Ohio districts to the same destinations. By order of the Public Utilities Commission of Ohio the eastern carriers were permitted to increase the intrastate rates from the Ohio districts not to exceed 40 per cent, and to that extent the plan for increasing rates on coal within the eastern group presented in *Increased Rates, 1920, supra*, has not been made effective. At the time of hearing proceedings were pending before the Public Utilities Commission of Ohio, in which the eastern lines propose to further increase the Ohio intrastate rates by 16 cents per ton, and thereby restore the former differential.

Protestant coal operators assert that it is questionable whether mines in respondent's groups can, under normal conditions, successfully compete with southern Ohio mines in the territory in question even under the 40-cent differential, and that certainly, under normal conditions, a differential of 56 cents will prevent such competition in the sale of steam coal.

As shown in *Bituminous Coal to C. F. A. Territory, supra*, the then existing rates from the inner Crescent group as a whole to Chicago and the "affected" area were predicated upon low basic rates. No increases in those rates have since been made except the general increases authorized in that proceeding and those following general order No. 28 of the Director General of Railroads and *Increased Rates, 1920, supra*. As a general rule the average short-line distances from respondent's basic groups to representative destinations in central territory exceed slightly but not materially those from the Kanawha district to the same destinations and the operating conditions are somewhat less favorable. The tonnage and rates from respondent's groups to central territory were considered and included in the scheme of rates from mines in the eastern group referred to in *Increased Rates, 1920, supra*, and respondent contends that failure to increase its rates to the same extent as those from the eastern group would ultimately disturb the rates from all other Crescent districts.

Protestants do not especially complain of the relationship under the present or proposed rates between Toledo and Michigan destinations referred to, but they rely in part upon the departure from the relationship prescribed by us as supporting their contention that the

proposed rates would disrupt rather than restore former relationships. The language previously quoted from our report in *Increased Rates, 1920, supra*, respecting rates on coal refers particularly to differentials or relationships as between competing origin districts and groups. We did not contemplate the increasing of all coal rates by a specific amount but only such departure from the percentage method of increase as might be necessary to preserve such relationships from origin points. No objection to the widening of the spread between the rates to Toledo and those to the affected Michigan points has been urged by receivers of coal at such destinations.

Respondent shows that to the comparatively few points in central territory to which joint rates are maintained from its groups but not from the Kanawha district the rates are adjusted with reference to those to near-by points. The record convinces us that the restoration of the differentials or spreads which formerly existed between the rates from respondent's groups and those from the Kanawha district to all points in central territory except certain destinations referred to hereinafter is desirable.

A majority of the departures mentioned by protestants from the general basis of rates to points in central territory are of minor character, and most of them are relatively unimportant, either because the differences are slight or because the rates would affect only a small volume of traffic. In some instances, however, the differences are substantial and respondents contend that they should not be further widened as proposed. This contention refers particularly to the rates on lake-cargo coal, the rates to Jeffersonville and New Albany, Ind., and those to St. Louis and points in Illinois on the St. Louis division of the Louisville & Nashville.

Following *Increased Rates, 1920, supra*, carriers in the eastern group increased the proportional rates on lake-cargo coal from the inner Crescent mines to Lake Erie ports by 56 cents per ton. Contrary to the general practice of lines serving the Crescent district in the eastern group, respondent does not maintain lower rates on lake-cargo coal than on commercial coal, and has never done so except during a short period while its lines were under federal control. The rate named in the suspended schedule to Toledo, for example, applicable on all coal, is the same from respondent's basic groups as the present rate from the Kanawha district to Toledo proper, but substantially higher than the present rate on lake-cargo coal from the Kanawha district to Toledo. Protestants urge that lake-cargo coal is a distinct kind of traffic; that if a relationship between the rates on lake-cargo coal from respondent's groups and from the Kanawha district formerly existed there can be no justification, on the ground of restoring a former relationship, for a greater increase

per ton from respondent's groups than from the Kanawha and other inner Crescent districts; and that if no such relationship formerly existed, then respondent is not entitled to increase its rates on lake-cargo coal more than 33½ per cent, as has already been done under our findings in *Increased Rates, 1920*. The question whether respondent should be required to maintain lower rates on lake-cargo coal than on commercial coal and the same rate to Toledo on the former as applies from the Kanawha district is before us in Docket No. 11559, *Harlan Coal Operators Assn. v. L. & N. R. R. Co.*, and will not be further considered herein.

The proposed rates to Jeffersonville and New Albany, Ind., points located on the north bank of the Ohio River opposite Louisville, Ky., are 40 per cent higher than those in effect on August 25, 1920. The rate to Louisville is but 25 per cent higher. Respondent admits that the proposed rates to these points are not justified and states that they will be promptly revised to conform with our finding in *Increased Rates, 1920*, that "where a river constitutes the boundary line between two groups, points on both banks thereof shall be considered as border line points."

St. Louis is a large coal-consuming point and is also one of the gateways upon which combination rates on traffic for beyond are based. Exclusive of the rates on lake-cargo coal, it is perhaps the most noteworthy exception to the general basis from respondent's groups and the Kanawha district to central territory. At St. Louis, Chicago, and points in Illinois generally, the mines represented by protestant operators encounter strong competition with Illinois coal, and in a lesser degree with the coal from the Kanawha and other inner Crescent districts. The present and proposed rates from respondent's basic groups to stations on its line from Upton, Ind., to St. Louis, both inclusive, are lower than the present rates from the Kanawha district, as indicated in the following table, in which are also shown the former rates from these districts and the contemporaneous rates to St. Louis from southern Illinois mines on respondent's line, stated in amounts per ton:

	From respondent's basic groups.	From Kanawha district.	From southern Illinois mines.
June 24, 1918.....	\$2.15	\$2.50	\$0.90
Aug. 25, 1920.....	2.60	2.95	1.00
Aug. 26, 1920.....	3.465	4.13	1.40
Proposed.....	3.64		

To East St. Louis and adjacent points in Illinois the rates from the southern Illinois mines were 20 cents under those to St. Louis until August 26, 1920, when the spread became 33.5 cents.

It will be noted that the former differential or spread of 35 cents between the rates from respondent's basic groups and those from the Kanawha district was increased to 66.5 cents on August 26, 1920, and under the proposed rates would be 49 cents. From June 24, 1918, to August 26, 1920, the spread between the rates from respondent's basic groups and southern Illinois mines to St. Louis increased from \$1.35 to \$2.065 per ton, and under the proposed rates would be \$2.24.

The establishment of the proposed rates would increase by 17.5 cents per ton the disadvantage against protestants' mines in competing with southern Illinois producers at St. Louis and would not restore the former spread between respondent's groups and other inner Crescent districts. It does not appear that there has been any very definitely established relationship in the past between the rates from respondent's groups and those from the Kanawha district and the mere reduction of the existing spread is not sufficient to justify a departure from the 33½ per cent basis authorized in *Increased Rates, 1920, supra*.

As has been stated, the normal or customary basis for rates from respondent's groups and from the Kanawha district to northwestern territory is the combination upon the gateway through which the traffic moves. That basis has always been, and now is, observed in making rates from the Kanawha district. The comparatively limited extent to which respondent has departed therefrom is indicated by the fact that of 8,666 points served by steam railroads in northwestern territory exclusive of northern Illinois, it maintains joint rates to only 588, or 6.8 per cent, distributed as follows: Iowa, 294; Nebraska, 2; Minnesota, 71; Wisconsin, 71; North Dakota, 34; Missouri, 116. It also maintains, contrary to the general basis, joint rates to a large number of points located on various lines in northern Illinois. The destinations to which respondent maintains joint rates, except those in northern Illinois, are located principally on the Minneapolis & St. Louis and Wabash railways.

Respondent explains that these joint rates were established several years ago; that originally they were the same as the combination rates from its groups and the Kanawha district; and that they were published in order to equalize the rates through the various gateways. Subsequently the carriers increased the factors to and beyond the gateways without making corresponding revisions of the joint rates, and consequently neither the present nor the proposed joint rates bear any fixed or definite relation to the rates from the Kanawha district to the same destinations or to the combination rates applying to all other points in northwestern territory from all of the Crescent districts.

The lack of any fixed or definite relationship between the former, present, or proposed joint rates from respondent's group-1 mines and the former or present rates from the Kanawha district to north-western territory is illustrated by the following comparisons, which also show the rates from southern Illinois mines:

MILWAUKEE, WIS. (C., M. & St. P.).

	Respond- ent's group 1.	Kanawha district.	Southern Illinois mines.
June 24, 1918.....	\$2.50	\$2.80	\$1.75
Aug. 25, 1920.....	2.95	3.40	2.05
Aug. 26, 1920.....	3.93½	4.76	2.57
Proposed.....	4.19	.....	.....

FREEPORT, ILL. (C., M. & St. P.).

June 24, 1918.....	\$2.90	\$3.15	\$1.43
Aug. 25, 1920.....	3.45	3.85	1.72
Aug. 26, 1920.....	4.60	5.39	2.41
Proposed.....	4.89	.....	.....

DES MOINES, IOWA (M. & St. L.).

June 24, 1918.....	\$3.35	\$4.00	\$2.25
Aug. 25, 1920.....	3.75	4.80	2.75
Aug. 26, 1920.....	5.00	6.60½	3.71½
Proposed.....	5.31	.....	.....

MINNEAPOLIS, MINN. (M. & St. L.).

June 24, 1918.....	\$3.55	\$3.80	\$2.45
Aug. 25, 1920.....	4.05	4.60	2.85
Aug. 26, 1920.....	5.40	6.33½	3.85
Proposed.....	5.73	.....	.....

WATERTOWN, S. DAK. (M. & St. L.).

June 24, 1918.....	\$4.25	\$4.55	\$3.05
Aug. 25, 1920.....	4.75	5.20	3.55
Aug. 26, 1920.....	6.33½	7.14½	4.79½
Proposed.....	6.71	.....	.....

Protestants show that to 281 destinations on the Minneapolis & St. Louis Railway named in the suspended schedules the average spread between the rates from respondent's groups and from southern Illinois mines has increased since June 25, 1918, from \$1.15 per ton to about \$1.61, and would be increased to \$1.95 by the proposed rates. A similar showing is made with respect to rates to points on other lines in northwestern territory. Respondent maintains joint rates from southern Illinois to northwestern territory, but the level of such rates is fixed by other lines primarily serving that territory.

The proposed joint rates to northwestern territory are substantially lower than the combination rates from the Kanawha district, and if they should become effective, the increases in amounts per

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ton since August 25, 1920, would be somewhat less than those resulting from the increases in the Kanawha district rates. They represent the same percentage increase as that made in the rates from the Kanawha and other inner Crescent districts to the gateways; the distances and the operating conditions from respondent's groups are said to be somewhat less favorable; and a substantial proportion of the hauls are over lines included in the eastern groups. Respondent argues, therefore, that the proposed rates are obviously just and reasonable. It also asserts that it would be impracticable to increase by 40 per cent the rates to central territory and maintain the present rates to points beyond in northwestern territory without creating innumerable departures from the long-and-short-haul rule of the fourth section. An examination of the exhibits of record, however, indicates that the different percentages of increase would produce that result in but few if any instances, for the proposed rates to the gateways are lower than the present rates to points beyond. The establishment of the proposed rates would of course lessen the increase in discrimination against any intermediate points in northwestern territory taking combination rates which resulted from the general increases on August 26, 1920.

It is said that under the abnormal conditions of coal shortage and car supply prevailing during recent years, the mines represented by protestants have, by diligent effort, been able to maintain a market for their coal in the northwest, even at points to which combination rates apply. But the testimony of several witnesses for protestant operators was uniformly to the effect that each successive increase in the spread between the rates on coal from respondent's groups and from southern Illinois has largely added to the difficulty of doing business in northwestern territory, and that under normal conditions their coal would be eliminated from that territory by the application of the proposed rates.

Manifestly, whatever relationship may have originally existed between the rates from respondent's groups and the Kanawha district to points in northwestern territory named in the suspended schedules has been long since destroyed. The proposed rates, therefore, can not be justified by the plea upon which respondent principally relies, viz, that they would restore a former relationship; nor does it follow that the burden upon respondent to prove that the proposed rates would be just and reasonable is sustained by merely showing that they are lower than the present combination rates from the Kanawha district, and from respondent's groups to other points in the northwest. It seems reasonable to conclude that under normal conditions of coal and car supply comparatively little coal would move all rail

from mines in respondent's or other Crescent groups on the basis of the combination rates, in view of the competition throughout the northwest with the coal from Illinois and other less distant mining districts, and with lake-cargo coal. In so far as these through rates from respondent's groups to northwestern territory are concerned, we think this is a case in which our general finding in *Increased Rates, 1920*, fixing the basis for through rates between points in the different groups, should be observed. The proposed increased rates are not sanctioned by any exception to the general basis therein made.

We find that the proposed rates to northwestern territory, to points on respondent's line from Upton, Ind., to St. Louis, both inclusive, to Jeffersonville and New Albany, Ind., and to certain points in central territory to which the rates in effect prior to August 26, 1920, were admittedly not constructed upon the proper basis because of errors in publication, have not been justified. We further find that the proposed rates to all other points in central territory have been justified. The rates to Jeffersonville and New Albany and the admittedly erroneous rates to certain other points in central territory should be revised promptly to the proper bases.

Respondents will be required to cancel the schedules under suspension, without prejudice, however, to the filing of schedules publishing, on not less than five days' notice, rates in conformity with our findings herein.

An appropriate order will be entered.

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No. 11312.

MORELAND MOTOR TRUCK COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAU-
KEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted August 30, 1920. Decided December 29, 1920.

Rate on pressed steel side members of automobile truck frames, in carloads, from Milwaukee, Wis., to Los Angeles, Calif., found unreasonable but not unduly prejudicial. Reparation awarded, and reasonable relationship of rates prescribed for the future.

Arthur Wright and Charles Clifford for complainant.

G. H. Baker and E. W. Camp for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed both by complainant and by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing motor trucks at Los Angeles, Calif., alleges that the rate charged on a carload of steel channels shipped from Milwaukee, Wis., to Los Angeles, Calif., on November 15, 1919, was illegal, unreasonable, and unduly prejudicial. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates will be stated in amounts per 100 pounds.

The articles shipped were for use as side members of automobile-truck frames. They were pressed to shape out of alloyed steel plates, about one-quarter of an inch thick, and a transverse section of one forms three sides of a rectangle with slightly rounded corners, one side being known as the web and the other two sides as the flanges. The length over all is about 23 feet, 2 inches, and the width of the flanges is 3.25 inches. For about three-quarters of the length the web is 8 inches wide, tapering somewhat to the end, which is slightly bent. They are shipped in the rough just as they come from the press without being punched or machined. They weigh approximately 260 pounds each, and will load to car capacity.

The shipment weighed 108,000 pounds and moved over defendants' lines. It was billed as steel channels, but upon arrival at Los Angeles freight charges of \$2,281.45 were collected at the class-A

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rate of \$2.215, minimum 30,000 pounds, applicable on metal automobile parts. A commodity rate of \$1.125, minimum 50,000 pounds, was contemporaneously in effect on channels, listed under the head of structural iron and steel.

Complainant contends that these articles were channels within the description in connection with the \$1.125 rate, and that this rate was applicable, basing its contention principally on the general form and construction of the article and the fact that the structural steel channel rates have been assessed on former shipments. Defendants contend that the term channels, included under the head of structural iron and steel, refers to articles used in the construction of buildings, bridges, etc., and not of vehicles. Their witness testified that this term has a well-defined meaning in the trade and refers to articles produced by rolling, having a uniform section throughout, with sharp corners, and with the flanges increasing in thickness from the edge toward the web. From the evidence it appears that the rate charged was applicable.

Complainant further contends that the rate applied was unreasonable. For the distance from Milwaukee to Los Angeles, 2,300 miles, it yielded earnings of 19.3 mills per ton-mile and, on this shipment, 99.19 cents per car-mile. On a shipment of the minimum weight, 30,000 pounds, it would yield car-mile earnings of 28.89 cents. The structural iron and steel rate of \$1.125, if applied to this shipment, would have yielded 9.78 mills per ton-mile and 50.38 cents per car-mile. At the corresponding minimum weight, 50,000 pounds, the car-mile earnings would have been 24.46 cents. The rate charged is also applicable to highly manufactured and delicate metal parts of automobiles, including gasoline engines, radiators, and carbureters. From and to these points the rate on automobile springs, a complete manufactured article, is \$1.44, minimum 40,000 pounds. Complainant insists that a reasonable rate should not exceed \$1.125, and if this rate is established it is willing that the carload minimum should be 80,000 pounds.

These articles were said by complainant to exceed rolled channels in value by about one-half cent per pound. Defendants' witness testified that a fair price for rolled channels would be about 3.25 or 3.5 cents per pound, and estimated that the pressed articles were probably worth 4 or 5 cents per pound. Since 1913 complainant has received about 18 carloads of this material, on all of which, except the shipment here under consideration, the structural iron and steel rate was assessed.

Defendants offered no evidence bearing upon the reasonableness of the rate assailed. Their counsel stated that the rate on metal automobile parts was originally established to take care of the movement

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of mixed carloads of various automobile parts before the business of manufacturing automobiles on the Pacific coast warranted shipment of these frame parts in straight carloads; that the earnings on this shipment admittedly were very high; and that the time has come when some consideration in the making of rates should be given to the movement of these heavy parts in straight carloads. Defendants contend, however, that these parts are not entitled to the same rates as structural iron and steel because of their greater value and smaller volume of movement. These automobile parts and structural steel channels differ but slightly in value and neither is susceptible to loss or damage in transit to any appreciable extent. While movement of these parts to complainant's plant has not been heavy as compared with the structural iron and steel movement as a whole, it might well compare favorably with that of individual items in the structural iron and steel list, or particular sizes and designs thereof. The transportation conditions do not, upon the whole, appear to warrant a higher rate on these automobile parts.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded, or may exceed, the rate contemporaneously applicable on structural steel channels from Milwaukee to Los Angeles; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$1,122.70, with interest.

The allegation of undue prejudice has not been sustained.

An appropriate order will be entered.

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No. 11328.

NORTHERN BROKERAGE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

Submitted October 7, 1920. Decided December 29, 1920.

Charges on a carload of potatoes shipped from Kindred, N. Dak., to Rockford, Ill., and reconsigned to Princeton, Ill., found not unreasonable. Refund of overcharge directed and complaint dismissed.

C. S. Bather for complainant.

G. A. Hoffelder for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation engaged in the wholesale grocery and commission business at Rockford, Ill., alleges that unreasonable charges were collected on a carload of potatoes shipped April 9, 1919, from Kindred, N. Dak., to Rockford, thence reconsigned to Princeton, Ill. We are asked to award reparation to the basis of a joint rate contemporaneously in effect from point of origin to final destination, and also for demurrage charges alleged to have been illegally assessed.

The shipment moved over the Great Northern to Minnesota Transfer, Minn., and the Chicago, Burlington & Quincy, hereinafter called the Burlington, to destination. Five days after the shipment was made complainant requested the initial carrier's agent at Moorhead, Minn., to reconsign it to Princeton. Instructions to carry out this request were received from the Great Northern by the Burlington's representative at St. Paul, Minn., April 15 at 11 a. m., too late to intercept the car at Savanna, Ill. This, defendants contend, was the last point at which reconsignment to Princeton could be effected at the joint rate.

At Savanna the Burlington diverges, the main line running east to Chicago through Flag Center, Ill., from which a branch extends north ending at Rockford, while another line runs in a southerly

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direction from Savanna to Princeton. This other line forms part of the direct route from Kindred to Princeton over which shipments to Princeton ordinarily move. Princeton can also be reached via Flag Center and over certain branch lines, or over the main lines through Flag Center to Aurora, Ill., thence westerly to destination. Some traffic is handled over these two routes, but they are less direct.

An exhibit of record shows that telegrams were sent by the Burlington's St. Paul office to various stations along its line, including La Crosse, Wis., Savanna, and Flag Center, and to its main Chicago office, in an endeavor to intercept the car. Contrary to usual practice the car moved in a through train past Flag Center to Rochelle, Ill., a few miles beyond, where it arrived April 16, and on the same day was hauled back to Flag Center and thence north to Rockford, again without stopping at Flag Center. Eventually it was forwarded via Flag Center, Rochelle, and Aurora to Princeton, and charges were collected at the applicable combination commodity rate of 46.5 cents per 100 pounds, composed of factors of 35 cents from Kindred to Rockford and 11.5 cents beyond. A refrigerator-car rental charge of \$5, and demurrage charges of \$18 for delay at Rockford were also collected.

The joint rate from point of origin to final destination, contended for by complainant, was 35 cents. The reconsigning tariff applicable in connection therewith provided that "reconsignment or change of destination to any point beyond point where reconsignment is effected in the same general direction may be made on basis of through rates * * * without extra charge therefor." Rockford is not intermediate to Princeton, but complainant contends that as they are in the same general direction from Kindred the through rate should apply. This position is untenable. The through rate can not be protected where reconsignment is effected at a point not on a through route to which the rate applies, or where a back haul becomes necessary, except under special tariff provisions lacking in this case. Rockford is at the extremity of a branch line and, naturally, no through rate to Princeton applied via that point. Nonexistence of an out-of-line haul is a condition precedent to the right of a shipper to demand reconsignment at the through rate from origin to final destination. *Red Cedar Shingle Mfrs. Assn. v. C., B. & Q. R. R. Co.*, 41 I. C. C., 422.

The record does not establish that defendants were lacking in ordinary care, and there is no convincing evidence that the combination rate charged was unreasonable. The service required of defendants was analogous to that required for two local shipments.

The car arrived at Rockford at 4 p. m. on April 16 and free time expired at 7 a. m., April 18. Three days' demurrage accrued covering 60 I. C. C.

April 18, 19, and 21, the 20th being a Sunday. The car was released at 6 p. m., April 22, but no demurrage accrued for that day, as consignee's order releasing the car was by letter dated April 21, and under the Burlington's tariff this would release the car as of 7 a. m., on the 22d. Complainant contends that no demurrage should have accrued, because instructions to forward the car to Princeton were received from complainant by the Burlington's agent at Rockford on the day of its arrival there. These instructions were not acted upon, for the reason that the car had been consigned by the Price-Smith Company, not a party hereto, to itself at Rockford, and as complainant was not a party to the bill of lading its authority to change the destination was questioned. A notation on the bill of lading reads "allow inspection Northern Brokerage Company" and complainant contends that this was its authority to direct reconsignment since it held the bill of lading. Defendants deny that the bill of lading was in complainant's possession when its reconsigning instructions were given. The original bill of lading is of record and bears no endorsement. Moreover, complainant's original instructions to defendant's agent at Rockford called for reconsignment upon the basis of the through rate from point of origin to ultimate destination, and the agent properly refused to re consign under that condition. Demurrage charges in the amount of \$9 were legally assessed. Defendants should promptly refund the admitted overcharge of the balance.

We find that the charges assailed were not unreasonable. An order will be entered dismissing the complaint.

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No. 11054.

FEDERAL OIL & SUPPLY COMPANY

v.

DIRECTOR GENERAL, CHICAGO, MILWAUKEE & ST.
PAUL RAILWAY COMPANY, ET AL.

Submitted October 5, 1920. Decided January 13, 1921.

Rate applicable to the transportation of a carload of steam-cylinder stock from Salt Lake City, Utah, to Cleveland, Ohio, in August, 1918, found to have been unreasonable. Reparation awarded. Fourth section relief denied.

Clifford Thorne for complainant.*C. Frankenger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

This case stands submitted upon exceptions filed by the defendant Director General of Railroads to the report proposed by the examiner and served upon the parties.

Complainant is a corporation engaged at Des Moines, Iowa, in the purchase and sale of products of petroleum oil. By complaint filed December 5, 1919, it alleges that the rates maintained by defendants prior to September 20, 1918, for the transportation of refined petroleum oil, including lubricating oil, from Salt Lake City, Utah, to Cleveland, Ohio, were, and that the present rate is, unreasonable, unduly prejudicial, and in contravention of section 4 of the interstate commerce act and section 10 of the federal control act. A rate satisfactory to complainant has since been made effective, and the only relief sought is reparation on a shipment which moved August 9, 1918.

On the last-named date complainant caused to be shipped from Salt Lake City a car containing 52,985 pounds of steam-cylinder stock, a low-grade, unrefined, lubricating oil, consigned to itself at Cleveland. The shipment moved by way of the Oregon Short Line to Ogden, Utah; Union Pacific to Council Bluffs, Iowa; Chicago, Milwaukee & St. Paul to Spaulding, Ill.; Elgin, Joliet & Eastern to Porter, Ind.; thence by New York Central. Charges in the sum of \$802.72, exclusive of war tax and demurrage, were paid by complainant's customer at destination and charged back to complainant, based on a rate of \$1.515 per 100 pounds. The rate legally applied.

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cable was \$1.705 and the shipment was therefore undercharged. Complainant contends that the rate charged and that legally applicable were unreasonable and unduly prejudicial to the extent that they exceeded 94.5 cents per 100 pounds, the rate contemporaneously in effect from points west of Salt Lake City to Cleveland and points east thereof.

The rate on refined petroleum oil from Salt Lake City to Cleveland, in effect June 24, 1918, was \$1.365, composed of the fifth-class rate of \$1.16 to the Mississippi River and 90 per cent of the fifth-class rate, or 20.5 cents, beyond. Defendants contemporaneously maintained a rate of 90 cents on the same commodity from refineries on the Pacific coast and at intermediate points as far east as Lago, Garfield, and West Weber, Utah, to Chicago, Cleveland, and other eastern points. Lago and Garfield are 19 miles and 14 miles, respectively, west of Salt Lake City, and West Weber is 6 miles west of Ogden. On June 25, 1918, the rates were increased 25 per cent in accordance with general order No. 28 of the Director General, the rate from Salt Lake City thus becoming \$1.705 and from the blanketed territory west thereof \$1.125. Shortly after the promulgation of general order No. 28 the Railroad Administration, at the solicitation of the oil interests, agreed to its modification, in so far as rates on oil were concerned, by the substitution of an increase of 4.5 cents per 100 pounds over the rates in effect May 25, 1918, in lieu of 25 per cent. Accordingly, the \$1.125 rate from the Pacific coast group and intermountain territory was reduced to 94.5 cents, effective August 1, 1918. The revision in the rate from Salt Lake City was not made until September 20, 1918, when it became \$1.41. Effective November 4, 1919, the 94.5-cent rate was established from Salt Lake City. Complainant contends that after August 1, 1918, the rate from Salt Lake City should not have exceeded 94.5 cents. The departures from the fourth section were protected by appropriate applications which were assigned for hearing with the complaint, but no justification therefor was offered by defendants.

Defendants did not undertake to justify the maintenance of a higher rate from Utah common points to eastern destinations than was contemporaneously in effect from points farther west. In July, 1918, application was made to the San Francisco district freight traffic committee of the Railroad Administration for authority to publish rates from Salt Lake City on the same basis as applied from the western refineries, but for some reason not explained of record the necessary freight-rate authority was not then issued and the higher basis remained in effect until November 4, 1919. They do not concede, however, that a rate in excess of 94.5 cents was unreasonable, and suggest that if reparation be awarded it should be based on a combination rate of \$1.005, composed of 6 cents from Salt

Lake City to Lago and 94.5 cents back through Salt Lake City or Ogden to Cleveland.

Complainant submitted numerous exhibits and comparisons in support of its contention that the 94.5-cent rate, made effective from more distant points August 1, 1918, would have been a reasonable rate to have charged on traffic from Salt Lake City. It shows that that rate was blanketed both as to points of origin and destination and applied, for example, from Lago to Cleveland, a distance of 1,893 miles, and from Los Angeles to Boston, 3,240 miles. The distance from Salt Lake City to Cleveland is 1,874 miles. Particular reference is made to a rate of 94.5 cents in the opposite direction, from Cushing, Okla., to Reno, Nev., yielding 10.5 mills per ton-mile for the distance of 1,793 miles. Cushing is located in an oil-producing territory, and there is said to be a movement of lubricating oil from that point to Reno. Comparison is also made with a rate of 69.5 cents applicable on refinery residuum, including fuel and road oil, from the territory west of Salt Lake City to eastern destinations. Steam-cylinder stock is a refinery residuum, worth in this case 10 cents per gallon, but is of a higher grade than fuel or road oil. The rate of \$1.705 legally applicable from Salt Lake City yielded earnings of 18.2 mills per ton-mile as compared with earnings ranging from 5.8 mills to 11 mills on traffic from and to points taking the 94.5-cent rate. The latter rate, now applicable from Salt Lake City to Cleveland, yields 10.1 mills per ton-mile and 26.7 cents per car-mile, the latter based on a loading of 52,985 pounds per car. Other comparisons were submitted, all of which tend to prove that a rate in excess of 94.5 cents from Salt Lake City was unreasonable.

Complainant testified that the shipment was sold to a customer in Cleveland at a price which included the cost of transportation based on the combination rate of \$1.005 hereinbefore referred to. The charges assessed for the transportation were paid by this customer and deducted from the invoice price of the oil in settlement with complainant. Complainant is therefore entitled to any reparation that may be awarded. *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531; *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 40 I. C. C., 738.

We find that the rate in effect from Salt Lake City to Cleveland at the time the shipment moved was unreasonable to the extent that it exceeded 94.5 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; and that it is entitled to reparation in the sum of \$302.01, the difference between the charges paid and those that would have accrued at a rate of 94.5 cents, with interest. An order awarding reparation will be entered, but no order prescribing a rate for the future is necessary. The fourth section applications will be denied.

No. 11212.

S. J. HAWKINS, DOING BUSINESS UNDER THE NAME OF
RUPERT MILLING COMPANY, ET AL.

v.

OREGON SHORT LINE RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted August 14, 1920. Decided January 13, 1921.

Minimum weights applicable on shipments of hay from Rupert, Idaho, and other adjacent points to all points not shown to have been or to be unreasonable or otherwise unlawful. Complaint dismissed.

S. J. Hawkins for complainants.

J. M. Souby for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

No exceptions were filed to the proposed report issued by the examiner in this case and it was submitted without argument.

It is alleged that the minimum weights applicable under defendants' tariffs on hay are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the interstate commerce act and section 10 of the federal control act. We are asked to prescribe reasonable rules for the future and to grant reparation. The minimum weights attacked are as follows:

17,000 pounds for cars 34 feet and less.
20,000 pounds for 35-foot cars.
22,000 pounds for 36-foot cars.
24,000 pounds for 40-foot cars.

The complainants seem satisfied with the minimum applicable on the 40-foot cars, as the testimony was confined to the minima on cars of 36 feet and under.

The complainant at the hearing did not present any definite facts as to the actual loading of cars furnished or the sizes of the cars loaded, to support his contention that the minima as specified could not be loaded into the cars furnished. But he pointed out that it was the height of the car as much as its length that controlled the weight of hay that can be loaded, because if the car is a few inches too low to permit the necessary top layer of bales being loaded into it the minimum weight can not be loaded.

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However, the testimony shows that the weight of the bales differed, depending upon the density of their compression and the condition of the hay when baled. Referring to the weight that can be loaded into a particular car, the complainant admitted upon cross-examination that the "condition of hay has more to do with it than anything else."

From a statement filed by defendants which purports to be a list of all cars furnished the Rupert Milling Company or S. J. Hawkins at Rupert, Heyburn, or Acequia, Idaho, which were loaded with hay, for the period from November 23, 1918, to and including July 25, 1919, it appears that there were in all 158 cars, of which 95 were 36 feet or less in length. Of these 95 cars it appears that only 33 were loaded under their respective minima. A total of 46 cars of all sizes is shown to have been loaded under their respective minima. This statement also shows the number of bales loaded into each car. The comparison of the number of bales loaded with the dimensions of the particular car and the weight of the load bears out conclusively the admission of the complainant that the condition of the hay has more to do with the possible loading than anything else.

The smallest of all of the 158 cars loaded appears to be C., M. & St. P. car No. 38054. Its dimensions are as follows:

33 feet 2 inches long.
7 feet 10 inches wide.
6 feet 2 inches high.

On April 30, 1919, the complainant loaded into this car 225 bales of hay which weighed 20,900 pounds—3,900 in excess of the minimum. The next smallest car appears to be C., St. P., M. & O. car No. 11566, of dimensions shown as follows:

33 feet 5½ inches long.
8 feet 3½ inches wide.
6 feet 10½ inches high.

On January 14, 1919, the complainant loaded into this car 198 bales of hay which weighed 23,850 pounds, or 6,850 pounds in excess of the minimum. These facts disprove complainant's contention that the dimensions of these small cars are such that a sufficient number of bales can not be loaded into them to make the minimum weight required.

In M., K. & T. car No. 94133 of the following dimensions—

33 feet 1½ inches long.
8 feet 2½ inches wide.
7 feet high.

the complainant on February 8, 1919, loaded only 158 bales, but the load weighed 20,060 pounds, or 3,060 pounds above the minimum.

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This would indicate that it is a matter entirely of how much the bales themselves weigh, and it appears that the weight per bale will depend necessarily upon the condition of the hay and the degree of density with which it is compressed.

From a further statement furnished by defendants of the shipments of hay made from other stations in Idaho and from one station in Oregon for the month of January, 1920, it appears that the complainant was furnished the same sort of equipment as to size as is furnished others and that in some instances the minimum is also not loaded by others. This statement covers 799 cars of all sizes, of which only 159 are shown to have been loaded under their respective minima. When taken in connection with the variations in the different cuttings of alfalfa, which is the chief kind of hay shipped, and which it appears varies in weight according to the seasons, it does not appear that the minimum weights attacked are much, if any, out of line.

A reduction in the minimum weights would produce what would seem from this record to be an unjustifiable reduction in carriers' revenues and at least a reduction not warranted upon a record so narrow in its scope on a matter that must be applied generally over entire systems of railroad.

We find that the minimum weights here in issue are not shown to have been or to be unreasonable or otherwise unlawful. An order dismissing the complaint will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1224.
CHIP BOARD AND STRAWBOARD IN WESTERN TRUNK
LINE TERRITORY.

Submitted November 29, 1920. Decided January 24, 1921.

Proposed increased rates on chip board and strawboard between points in western trunk line territory found justified. Orders of suspension vacated and proceeding discontinued.

Robert H. Widdicombe for Chicago & North Western Railway Company; *F. K. Crosby* for Chicago, Rock Island & Pacific Railway Company; *G. A. Hoffelder* for Chicago, Burlington & Quincy Railroad Company; and *E. W. Soergel* for Chicago, Milwaukee & St. Paul Railway Company.

Frank A. Larish for Michigan Paper Mills Traffic Association; *Charles R. White* for Box Board Manufacturers Association; *C. S. Bather* for Rockford Paper Box Board Company and Rockford Paper Mills; *Isaac Born* and *C. P. Stewart* for Terre Haute Paper Company, Coshocton Straw Paper Company, and Lafayette Box Board & Paper Company; *W. J. C. Kenyon* for St. Joseph Paper Box Company, Western Tablet & Stationery Company, Missouri Paper Products Company, and Wyatt & Green Paper Box Company; *O. Van Brunt* for Certain-teed Products Corporation; and *H. D. Bergen* for Omaha Chamber of Commerce Traffic Bureau, Eggers-O'Flynn Company, and Omaha Fibre & Corrugated Box Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective October 25, October 27, and November 29, 1920, respondents propose to increase the rates and minimum carload weight on chip board and strawboard moving between points in western trunk line territory. Protests having been filed, the operation of the schedules was suspended until February 22, March 29, and March 30, 1921, in respect of the rates but not of minimum weight.

Strawboard is manufactured from straw; chip board from wood pulp, scrap paper, or rags. These boards are used for making paper boxes, book covers, and other articles and go by various names,
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apparently according to the use to which they are put. For instance, when used for making covers for books the board is binder board; when for the manufacture of trunks, trunk board. They are not used for building purposes.

For at least 12 years chip board and strawboard have been included in the building and roofing material description, which embraces such commodities as roofing paper, building paper, asphalt, asphalt shingles, prepared roofing, tar, etc., all taking the same rates. They have been carried also in the paper-board items, which include articles such as binder board, box board, fibre board, pulpboard, and wall board, and, in practically all cases, take rates somewhat higher than building and roofing material. The proposed increases are to be brought about by eliminating chip board and strawboard from the building and roofing material descriptions, thus leaving in effect the rates published in connection with the paper-board items, or, in the absence of such items, the applicable class rates. Rates will be stated in cents per 100 pounds.

The present and proposed rates from and to a few typical points, taken from exhibits submitted, are shown below, together with the ton-mile and car-mile earnings based on a loading of 50,000 pounds:

From—	To—	Distance.	Present rates.			Proposed rates.		
			Rates.	Ton-mile earnings.	Car-mile earnings.	Rates.	Ton-mile earnings.	Car-mile earnings.
		Miles.	Cents.	Mills.	Cents.	Cents.	Mills.	Cents.
Chicago, Ill.....	Omaha, Nebr.....	498	27	11	27.6	31	12.7	31.7
Do.....	Kansas City, Mo.....	451	27	11.9	29.9	31	13.7	34.3
Do.....	Des Moines, Iowa.....	358	21	11.7	29.3	25.5	14.2	35.6
Do.....	St. Joseph, Mo.....	470	27	11.4	28.7	31	12.1	32.9
St. Paul, Minn.....	Omaha, Nebr.....	345	27	15.6	39	31	17.9	44.8
Do.....	Sioux City, Iowa.....	267	23.5	17.6	44	24.5	18.2	45.8
Rock Falls, Ill.....	Omaha, Nebr.....	419	23	10.9	27.4	27	12.8	32.2
St. Louis, Mo.....	do.....	414	19	9.2	22.9	23	11.1	27.7
Do.....	Sioux City, Iowa.....	508	27	10.6	26.5	31	12.2	30.5
Esau Claire, Wis.....	Dubuque, Iowa.....	222	17	15.3	38.2	23	20.7	51.8
Peoria, Ill.....	Cedar Rapids, Iowa.....	166	13	15.6	39.1	19	22.9	57.2

Chip board and strawboard are rated fifth class in western classification, and respondents compare the proposed rates with such fifth-class rates and with commodity rates published on other articles rated fifth class, such as egg cases, egg-case fillers, soap, stoves, paints, vinegar, iron and steel articles, etc. These comparisons cover rates from Chicago, Peoria, and St. Louis to various points and show that the proposed rates average approximately 70 per cent of the fifth-class rates, and in most cases are as low as, or lower than, the commodity rates on the fifth-class articles selected. Protestants contend that this showing is valueless unless accompanied by testimony re-

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specting the volume of traffic, the loading characteristics, and other well-known elements of rate making, and they point to what was said respecting such comparisons in *Western Trunk Line Rate Increases*, 43 I. C. C., 481, 488, 489.

Respondents also compare the proposed rates with the rates on chip board and strawboard for like distances in central territory, which are 90 per cent of sixth class, as prescribed by us in *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84. Generally speaking, the rates on this traffic in central territory are on a slightly lower basis than the proposed rates, although a number of instances are shown where the latter are less for corresponding distances. This showing, respondents urge, is strongly indicative of the reasonableness of the proposed rates, and particularly in view of the conditions west of Chicago, which they assert warrant a somewhat higher basis than in central territory.

Respondents submit exhibits showing that the proposed rates approximate classes C, D, or E of western classification, classes which they state are intended to take care of low-grade commodities. To this protestants reply that class C in western classification approximates sixth class in official classification, and contend that the proper basis for comparison between the two territories would be 90 per cent of class C with 90 per cent of sixth class. The exhibits show that in the great majority of cases the proposed rates approximate classes D and E of the western classification rather than class C, and that the comparative basis proposed by protestants would result in rates higher than those under suspension.

Comparison is also made by respondents of the rates on rags and scrap paper between Kansas City, Mo., Omaha, Nebr., Sioux City, Iowa, and Sioux Falls, S. Dak., on the one hand, and St. Louis, Peoria, Chicago, and Mississippi River (proportional rates), on the other hand, with the present and proposed rates on chip board and strawboard, which shows that the proposed rates are in no case over 0.5 cent higher than those in effect on rags and scrap paper.

The value of chip board and strawboard in the early part of November, 1920, ranged from \$60 to \$100 per ton, and in some cases even higher, and respondents compare this with the contemporaneous value of building paper, which was from \$75 to \$80 per ton. Protestants stated that at the time of the hearing grades of these boards, which had theretofore sold for as high as \$150 per ton, were on the market at \$46.50; that it was difficult to get orders at \$50; and that the factories were running on practically a 60 per cent basis. The cause of this falling off in prices is not clear from the record.

Protestants compare the proposed rates on chip board with rates on printing (not newsprint) and book paper, valued at approxi-

mately \$300 per ton, which is illustrated by the following table, to which we have added a column showing the present rates:

From—	To—	Distance.	Rate.	Present rate on chip and straw board.
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Peoria, Ill. ¹	Cedar Rapids, Iowa.....	170	19	13
Neenah, Wis. ²	Chicago, Ill.....	177	17	.....
St. Louis, Mo. ¹	Kansas City, Mo.....	278	28	19
Park Falls, Wis. ¹	Milwaukee, Wis.....	287	17	.....
Chicago, Ill. ¹	St. Paul, Minn.....	366	23	17
Park Falls, Wis. ¹	Chicago, Ill.....	376	20.5	.....
Chicago, Ill. ¹	Kansas City, Mo.....	451	31	27
Ashland, Wis. ²	Chicago, Ill.....	425	22.5	.....

¹ Chip and straw board, carload minimum 50,000 pounds.

² Printing paper, carload minimum 36,000 pounds.

Respondents object to the use of these rates on printing paper for comparative purposes for the reason that they are the lowest rates on paper that can be found in western trunk line territory, but protestants state that they move probably 80 per cent of the paper traffic in that territory and are, therefore, representative. It is the contention of protestants that, if the carriers are in need of greater revenue, the rates on printing and book paper should be increased rather than "to increase on a commodity which is now bearing more than its fair share of the transportation cost."

Protestants show that the proposed rates on chip board and strawboard will be but slightly lower than the present rates on paper boxes and cartons, k. d., and urge that to permit the proposed increases to become effective will result in driving many box manufacturers out of business, as manufacturers located near the chipboard and strawboard mills can ship their finished product into this consuming territory at approximately the same rates as the local box manufacturers have to pay on their raw material. For example, it is shown that the present rate on paper boxes from Chicago to Omaha is 39 cents, and that the proposed rate on chip board and strawboard is 31 cents. Taking Lincoln, Nebr., as a typical box-consuming point in the Omaha district, it is shown that the Omaha box manufacturer, in order to reach Lincoln, assuming that he bought his raw material in Chicago, would have a total freight rate of 54 cents, made up of 31 cents on the board from Chicago to Omaha plus 23 cents on the finished box to Lincoln, while box manufacturers at Chicago would be able to secure their board in Chicago or at near-by producing points and get into Lincoln on a rate of 44 cents.

One of the principal reasons for the proposed elimination of chip board and strawboard from the building and roofing material items

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is, respondents assert, to bring the rates on these two commodities into line with the rates on all other paper products. To this, protestants reply that there are in reality but three different kinds of so-called paper board; namely, chip board, strawboard, and wall board; that all other products specified in the paper-board items are but trade names, largely so designated because of the use to which they are put; and all shipments of chip board and strawboard have for many years moved under the building-material rates. They contend that the rates published in connection with these paper-board items are obsolete except on wall board and strongly object to using those rates as a means of bringing about what they say is an unwarranted increase. They direct attention to our refusal to allow an increase in chip-board rates in *Western Trunk Line Rate Increases*, *supra*. The respondents in that case contemplated higher rates on chip board than on other so-called paper boards, and this was the reason for the conclusion there reached.

We find that respondents have justified the proposed increases. An order will be entered vacating our orders of suspension and discontinuing this proceeding.

EASTMAN, Commissioner, dissenting:

The rates on chip board and strawboard are now the same as the rates on building and roofing papers, and it is not proposed to increase these latter rates nor is it suggested that they are too low. So far as transportation characteristics and value are concerned, it does not appear that there is any material difference between the two groups of commodities. In *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84, 100-1, we said:

On this record there appears no good reason why paper boards of all kinds should be segregated from building and roofing paper and accorded a lower basis of rates.

If this is so, there would seem to be still less reason why paper-board rates should be segregated and accorded a *higher* basis of rates, which is the proposal now before us. The two classes of commodities have taken the same rates in western trunk line territory for many years, and under our decision in the case just cited they were given the same basis of rates in official territory. Inasmuch as respondents regard the present rates as sufficiently high for building and roofing papers, it seems a fair conclusion that they are not too low for chip board and strawboard.

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No. 10943.

AMERICAN SEA GREEN SLATE COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted October 16, 1920. Decided January 13, 1921.

Rates on roofing slate from Granville and Middle Granville, N. Y., West Pawlet, Fair Haven, and Poultney, Vt., to various interstate destinations, not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

C. W. Nash and *Ernie Adamson* for complainants.

Parker McCollester for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed, and oral argument had.

Complainants, producers and shippers of slate, by complaint filed October 6, 1919, allege that defendants' rates on roofing slate from Granville and Middle Granville, N. Y., West Pawlet, Fair Haven, and Poultney, Vt., to interstate points, particularly points in central freight association territory and beyond, were and are unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. We are asked to grant reparation and establish reasonable rates for the future.

Complainants ship from what is known as the New York-Vermont district, where the industry has been long established, and the annual output has a value of approximately \$1,000,000. The roofing slate produced there is of various colors and of tough and durable quality. It is taken from the quarries in large blocks, broken, and prepared for shipment in "squares" weighing from 650 to 750 pounds and varying in price from \$4 to \$20 per square according to color. The average price is slightly over \$7 per square. The slate shingles vary in size from 6 by 12 inches to 14 by 24 inches, and are about three-sixteenths of an inch thick.

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They are not easily broken in transit, and loss and damage claims have been small. The average loading is said to be between 51,700 and 60,000 pounds. Black slate, ranging in value from \$5 to \$9.50 per square of 650 pounds, produced in large quantities in Pennsylvania, is used in competition with complainants' output, but no other competition with producers of roofing slate is shown.

Roofing slate in carloads is rated sixth class, minimum 40,000 pounds, in official classification territory, but commodity rates generally apply from producing points in the New York-Vermont district.

Complainants contend that these commodity rates are too high in comparison with the corresponding class rates. They offer evidence purporting to show that the commodity rates from the New York-Vermont district to 46 points of destination average about 93 per cent of the corresponding class rates and yield a straight average of 2.02 cents per ton-mile for an average haul of 460.5 miles. The rates really yield little more than 1 cent per ton-mile. A comparison of class and commodity rates on roofing slate from stations on the Delaware & Hudson lines to divers destinations with the current class and commodity rates from the same district on wood shingles, composition roofing, and steel roofing purports to show that commodity rates on these articles average only from 70 to 75 per cent of their corresponding class rates and from this complainant argues that the commodity rates on roofing slate are unreasonable to the extent that they exceeded or exceed 70 per cent of the sixth-class rate in official classification territory. But there is little evidence as to the loading characteristics of the articles compared or their value, it is not clear that there is a movement of the most directly related commodities under the rates compared, and it is not shown that the circumstances or conditions of transportation are similar.

Defendants show that rates on roofing slate from the New York-Vermont district to central freight association territory are grouped with rates from the Pennsylvania district, although the hauls from the former district are about 100 miles greater; and that the New York-Vermont district has the advantage of low rates over differential routes to that territory which are not available from the Pennsylvania district. Complainants reply that no practical advantage results from this, because service over the differential routes is slower and because there is no complaint as to competition with Pennsylvania roofing-slate producers.

The principal ground of complaint is the alleged disparity in rates between roofing slate and competing roofing material such as wood shingles, asphalt shingles, composite roofing, roofing tile, corrugated-

iron roofing, roofing paper, and tar felt. But neither the extent of the competition between roofing slate and the commodities named, the price of many of the articles, the source of supply or movement of the competing roofing material, nor the volume of movement is clearly shown.

Upon consideration of the record we find that the rates assailed have not been shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial or preferential. The complaint will be dismissed.

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No. 11056.

KEELER LUMBER & FUEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
ET AL.

Submitted October 26, 1920. Decided January 13, 1921.

Rate charged on coal, in carloads, from Nokomis, Ill., to Shopiere, Wis., found to have been unreasonable. Reparation awarded.

S. B. Houck for complainant.

K. L. Richmond and *R. H. Wilddicombe* for defendants.

John F. Finerty and *Alex. M. Bull* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MCCORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by the Director General of Railroads, as Agent, to the report proposed by the examiner, and the parties were heard in oral argument.

Complainant is a corporation engaged at Shopiere, Wis., in the sale of lumber and fuel. By complaint filed December 5, 1919, it alleges that the rate charged by defendants on three carloads of bituminous coal shipped during February and March, 1919, from Nokomis, Ill., to Shopiere was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates will be stated in amounts per net ton.

Nokomis is on the Chicago & Eastern Illinois near the southeastern border of the central Illinois coal-producing district. Shopiere is a local station on the Chicago & North Western, hereinafter called the North Western, about 9 miles southeast of Janesville, Wis. The shipments, weighing in the aggregate 280,800 pounds, moved over the Chicago & Eastern Illinois to Arthur, Ill., the Pittsburgh, Cincinnati, Chicago & St. Louis to Peoria, Ill., and the North Western to Shopiere, a distance of 364 miles. No joint rate was in effect, and freight charges of \$336.96 were collected at the legally applicable combination rate of \$2.40, composed of \$1.10 to Peoria and \$1.30 beyond. Each component of this combination rate included the increases of 15 cents and 30 cents author-

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ized, respectively, in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General of Railroads.

In constructing rates from the central and southern bituminous-coal districts of Illinois it has long been the practice of the carriers serving this territory to accord Janesville and Shopiere, which are competitive points, the same rates. During the period of movement here involved there was in effect from central Illinois mines on the lines of the North Western and its connections to both Janesville and Shopiere, and from Nokomis to Janesville, a rate of \$1.70 but, contrary to the usual practice, this rate was not given effect on shipments from Nokomis to Shopiere. A rate of \$2 was contemporaneously applicable from mines on the Chicago & Eastern Illinois and other carriers in the southern Illinois district to Janesville and Shopiere for distances materially greater than those from Nokomis to these points and for hauls over the same route beyond Findlay, Ill., which is traversed by shipments from Nokomis.

As the tariff publishing the rate of \$1.70 from Nokomis to Janesville did not restrict the routing of shipments moving thereunder to any particular route or routes in connection with the North Western beyond Peoria, the rate was applicable over each of the several available North Western routes, including that through Harvard, Ill., via which route Shopiere is intermediate to Janesville. There existed, therefore, a departure from the long-and-short-haul clause of section 4 of the interstate commerce act, which appears to have been protected by an appropriate order. Effective May 26, 1919, the rates from Illinois mines to southern Wisconsin were revised and a rate of \$1.77 was established from Nokomis to Shopiere and Janesville. It is to the basis of this subsequently established rate that reparation is sought.

While the defendants contend that the combination rate of \$2.40, applied on the shipments in question, was not unreasonable they state that the rate of \$1.70 from Nokomis to Janesville would have been established to Shopiere at any time upon request.

The coal comprising the three shipments was sold by complainant on a delivered basis, determined by adding to the mine price freight charges at \$1.70 per net ton, which rate was quoted to complainant by the Shopiere agent of the North Western. While the total freight charges were paid by the consignee in the first instance, under the terms of its contract of sale complainant was required to credit the consignee in the amount that the charges collected exceeded those that would have accrued at the rate of \$1.70, and therefore is entitled to any reparation which may be found to be due on these shipments.

We find that the rate applicable on the shipments was unreasonable to the extent that it exceeded \$1.77 per net ton; that complainant

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made the shipments as alleged and paid and bore the charges thereon to the extent that they exceeded \$1.70 per net ton; that it has been damaged in the amount of the difference between the charges applicable and those which would have accrued at a rate of \$1.77 per net ton; and that it is entitled to reparation in the sum of \$88.45, with interest.

An order awarding reparation will be entered.

No. 11440.

SWIFT & COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted October 15, 1920. Decided December 29, 1920.

Rate on sulphuric acid in tank-car loads from Atlanta to La Grange, Ga., in October, 1918, found to have been unreasonable. Reparation awarded.

R. D. Rynder for complainant.

Frank W. Gwathmey for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the proposed report of the examiner.

Complainant, an Illinois corporation, alleges by complaint filed April 28, 1920, that the rate of 19 cents per 100 pounds charged by defendant on four tank-car loads of sulphuric acid shipped from Atlanta to La Grange, Ga., in October, 1918, was unreasonable and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act to the extent that it exceeded \$1.90 per net ton. We are asked to award reparation. Unless otherwise specified, rates will be stated in amounts per net ton.

The shipments moved over the Atlanta & West Point, 71 miles, and charges were collected at the applicable sixth-class rate of 19 cents per 100 pounds. There was contemporaneously in effect over the same route a commodity rate of \$1.90 from Atlanta to 60 I. C. C.

Opelika, Ala., to which point La Grange is directly intermediate. The tariff naming the latter rate provided, in conformity with rule 77 of Tariff Circular 18-A, that upon reasonable request therefor rates would be established to intermediate points not exceeding those to more distant points on one day's notice. No request was made for the \$1.90 rate. In September, 1918, and thus before the shipments moved, complainant requested the establishment of a commodity rate of \$1.60 on sulphuric acid from Atlanta to La Grange. This rate was then applicable in the opposite direction. On November 4, 1918, a commodity rate of \$2.10 was established, and this rate, plus the increase authorized under *Increased Rates, 1920*, 58 I. C. C., 220, is now in effect.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.90 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 10867.¹CHAMBER OF COMMERCE OF MONTGOMERY, ALA.,
ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATLANTA & WEST
POINT RAILROAD COMPANY, ET AL.

Submitted October 15, 1920. Decided January 13, 1921.

Rates charged for the transportation of corn sirup, or glucose, unmixed, in tank cars, from Chicago, Ill., and other points to Birmingham, Montgomery, and Dothan, Ala., not found to be unreasonable, but the adjustment of rates found to be unduly prejudicial to those points and unduly preferential of New Orleans, La. Undue prejudice required to be removed by the establishment of rates to Birmingham and Montgomery not higher than those to New Orleans, and to Dothan not to exceed 10 cents per 100 pounds higher than to New Orleans. Fourth section relief and reparation denied.

Bernard Lobman, E. B. Gaines, and M. M. Caskie for complainants in No. 10867.

J. H. Alldredge for complainants in No. 10890.

William Burger and N. W. Proctor for defendants.

Carl Giessow, Edgar Moulton, and W. W. Ingalls, jr., for New Orleans Joint Traffic Bureau, intervener.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

Exceptions to the report proposed by the examiner and served upon the parties were filed by the complainants and the intervener.

These two cases, which were heard together and will be disposed of in one report, relate to the rates on corn sirup, or glucose, unmixed, in tank cars, from Chicago, Pekin, and Waukegan, Ill., Roby, Ind., and Clinton, Davenport, and Keokuk, Iowa, to Birmingham, Montgomery, and Dothan, Ala. The complaints were filed August 18 and September 12, 1919. It is alleged that the rates are unreasonable, unjustly discriminatory, and unduly prejudicial to complainants and the destinations named and unduly preferential of New

¹ The report also embraces No. 10890, Dothan Chamber of Commerce et al v. Same, and portions of Fourth Section Applications Nos. 458, 602, 703, 799, 1021, 1024, 1590, 1542, 1625, 1952, 2042, 2045, 2138, and 3965.

Orleans, La., Mobile, Ala., and Pensacola, Fla., in violation of sections 1, 2, and 3 of the interstate commerce act and section 10 of the federal control act. The establishment of reasonable and non-prejudicial rates for the future and reparation are sought. The New Orleans Joint Traffic Bureau intervened in opposition to any change in the adjustment to New Orleans. The rates hereinafter stated apply per 100 pounds and are those in effect prior to *Increased Rates, 1920*, 58 I. C. C., 220.

The complaints also allege that the rates are in contravention of section 4 of the interstate commerce act. Accordingly there were assigned for hearing with the complaints fourth section applications filed by defendants and their connections which ask authority to continue lower rates on glucose, in tank cars, from the points of origin above named, except Chicago, to Mobile, Pensacola, and New Orleans than are contemporaneously maintained on like traffic to Birmingham, Montgomery, Dothan, and other intermediate points.

Birmingham and Montgomery are important jobbing points in central Alabama. The former is 650 miles south of Chicago and 348 miles, 276 miles, and 260 miles north of New Orleans, Mobile, and Pensacola, respectively. Montgomery is 97 miles south of Birmingham and correspondingly nearer the Gulf ports. Both points are on the main lines of carriers serving, directly or through their co-defendant connections, Chicago on the north and points on the Gulf of Mexico on the south. Dothan is on the Atlantic Coast Line and Central of Georgia railways, 119 miles southeast of Montgomery, but is not intermediate to the Gulf ports named. The principal complainant in No. 10867, the Georgia-Alabama Syrup Company, is engaged at Montgomery in the manufacture of refined table sirup. The Southern Syrup Company, also a complainant in No. 10867, formerly owned refineries in Birmingham and Montgomery, but shortly prior to the hearing sold them, and is interested here only in the matter of reparation. The principal complainant in No. 10890 is the Dothan Syrup Company, engaged also in the manufacture of refined table sirup.

The sirup manufactured by complainants and their competitors consists of a mixture of glucose and cane sirup. In some grades the cane sirup predominates and in others the glucose. New Orleans is the largest sirup-refining point in the south, and complainants' chief competition is with refineries located in or near that city. There are no refineries in Mobile or Pensacola. The manufacturers in New Orleans obtain glucose from the points of origin named in the complaint and also, to a less extent, from Edgewater, N. J. The glucose received by complainants is shipped principally from Clinton, Pekin, Roby, and Granite City. Complainants' markets for the

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refined product are in the states of North Carolina, South Carolina, Florida, Georgia, Alabama, Virginia, and Tennessee, and at points in those states they meet the active competition of the New Orleans refiners. The latter also ship in considerable volume to points west of the Mississippi River.

Glucose in tank cars is rated fifth class in all classification territories, but generally moves on commodity rates somewhat lower than the rates applying on molasses and refined sirup, which are also rated fifth class. The general basis for the construction of through rates from Chicago and other points in central freight association territory to points in the southeast, including Birmingham, Montgomery, and Dothan, and points in the same general territory, is by combination of the rates to and from Ohio River crossings or Memphis, Tenn. The proportional rate on glucose from Chicago to the Ohio River is the same as the fifth-class rate, 22.5 cents, which applies also from Davenport, Clinton, Roby, Keokuk, and Waukegan. The rate from Pekin is 20 cents. A rate of 26.5 cents applies from Chicago, Davenport, Clinton, and Roby to Memphis, and 24 cents from Keokuk and Pekin. The rates on glucose from the Ohio River and Memphis, used in combination with the rates north thereof to form the through rates, are usually specific commodity rates, but on traffic to Dothan the molasses and sirup rates are applied. The rate from Memphis to Birmingham and Montgomery is 25 cents and to Dothan 40 cents, producing through rates from Chicago of 51.5 cents and 66.5 cents, respectively. At the time of the hearing a lower combination could be made to Birmingham and Montgomery by the use of a commodity rate of 31.5 cents applying to Mobile plus a rate of 16.5 cents back from Mobile. On February 14, 1920, the rate from Mobile was increased to 27.5 cents, making the combination higher than that through Memphis.

Joint through rates are maintained on glucose to New Orleans, Mobile, and Pensacola, which are materially lower than the combination rates in effect to Birmingham, Montgomery, and Dothan, and also substantially lower than the combinations on the river crossings. The rate from Louisville and St. Louis to the Gulf ports is 24 cents and from Chicago and related points 7.5 cents higher, or 31.5 cents. The difference, therefore, Chicago over Louisville or St. Louis, on traffic to New Orleans is 7.5 cents as compared with 21.5 cents over the Ohio River on traffic to Birmingham, Montgomery, Dothan, and other points in the southeast. If made on combination the rate from Chicago to New Orleans and points taking the same rates would be 40 cents, 22.5 cents to the Ohio River and 17.5 cents beyond.

The record shows that the price of glucose, regardless of the originating point of the shipments, is based on the market price at Chi-

cago plus the rate from Chicago to destination. Complainants and their competitors purchase glucose on that basis and therefore the difference in the rates from Chicago represents the difference in the cost of glucose to the refiners. Under the circumstances the primary issue presented is with respect to the reasonableness and propriety of the rates from Chicago to Birmingham, Montgomery, and Dothan as compared with the rates contemporaneously maintained on traffic to New Orleans and other Gulf ports.

In support of their charges of unreasonableness and undue prejudice complainants rely principally upon comparisons with the rates and earnings on traffic to the alleged preferred points. Comparisons were also made with the rates to Meridian and Jackson, Miss., interior points in Mississippi Valley territory intermediate to New Orleans and Mobile, and with rates on other commodities from Chicago and elsewhere to Montgomery. As indicating the disadvantage to which the manufacturer at Montgomery is subjected in competing with the New Orleans refiners, exhibits were introduced showing that to typical points in North Carolina, South Carolina, Georgia, and other southern states the rates on the glucose to Montgomery plus the outbound rates on the refined product exceed the in-and-out rates to and from New Orleans to the same destinations.

The following table shows the rates from Chicago to Dothan, Birmingham, and Montgomery and a few other points in the southeast similarly situated and about the same distance from Chicago, and the rates to Meridian, Jackson, and New Orleans, also the car, car-mile, and ton-mile earnings, the first two based on the average loading of 96,000 pounds:

From Chicago to—	Distance.	Rate.	Revenue.		
			Per car.	Per car-mile.	Per ton-mile.
	Miles.	Cents.		Cents.	Mills.
Dothan, Ala.....	866	66.5	\$928.40	73.7	15.35
Birmingham, Ala.....	650	51.5	494.40	76.	15.95
Montgomery, Ala.....	747	51.5	494.40	66.1	13.79
Columbus, Ga.....	811	59.5	542.40	66.8	12.98
Americus, Ga.....	899	61.5	590.40	67.1	12.95
Atlanta, Ga.....	723	56.5	542.40	74.	15.43
Meridian, Miss.....	730	37.5	260.00	49.3	10.27
Jackson, Miss.....	798	37.5	260.00	48.7	10.16
New Orleans, La.....	921	31.5	262.40	32.8	6.45

It will be observed from the above table that the car-mile and ton-mile revenues derived by defendants on complainants' traffic are more than twice those accruing on similar traffic destined to New Orleans. Complainants contend that there is and can be no justification for the disparities shown above and that the rates which they are required to pay at Birmingham and Montgomery should in no

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event exceed the rates charged for the transportation to Meridian and Jackson. They also contend that in view of the greater service required in the movement of traffic to New Orleans and Mobile the rates to those points should be higher than to Birmingham and Montgomery. Complainants in No. 10890 urge that the rates on glucose to Dothan should not exceed those to Montgomery by more than the difference between the molasses and sirup rates to the respective points. On that basis the rate from Chicago to Dothan would be 7.5 cents higher than to Montgomery.

Defendants introduced numerous exhibits designed to show that the rates assailed are reasonable *per se* and not out of line with rates to other points in the same general territory. They show, for example, that the average of the rates from Chicago to 10 representative southeastern destinations averaging 700 miles from Chicago is 55 cents, as compared with 51.5 cents to Birmingham and Montgomery for an average distance of 699 miles. Comparisons are also made with rates from Chicago, New Orleans, and other points to many destinations in the southwest, east of differential territory in Texas, tending to show that the rates under attack are not excessive. No effort was made, however, to justify the wide spread between those rates and the rates to the ports, which is the principal cause for the complaints in these cases.

Evidence was offered on behalf of the New Orleans Joint Traffic Bureau, intervener, to show that the circumstances and conditions governing the transportation of traffic to New Orleans are dissimilar to those at interior points. An important item is that to a substantial extent the tank cars are returned from New Orleans to the northern shippers loaded with cane stock and blackstrap molasses, the records of two New Orleans refineries showing that in connection with their business in 1919 the loaded and empty mileages were respectively 70.65 and 29.35 per cent of the total. No return loading from Dothan is available, but in recent years the majority of tank cars received at that point have been forwarded to Mobile for northbound loading. There appears to be no return loading from Birmingham or Montgomery. It is therefore urged that strict uniformity in the rate structure, or in the measure of the rates, can not properly be required. Reference is made to *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 82 I. C. C., 61, in which we authorized the maintenance of rates from Ohio River crossings, St. Louis, and Chicago to Gulf ports lower than to intermediate points, mainly because of potential water competition on the Mississippi River; but it is here pointed out that the water competition at New Orleans, so far as glucose is concerned, is with coastwise steamers operating from Edgewater, N. J. The record shows that approximately 7.5

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per cent of the total tonnage of glucose received by three firms in New Orleans between July 1, 1918, and June 30, 1919, originated at Edgewater and moved to New Orleans in barrels at a rate of 24.5 cents, exclusive of marine insurance and terminal charges, which averaged about 4 cents per 100 pounds in addition. The balance moved from Chicago and Peoria rate points. Glucose in tanks does not move by boats on the Mississippi River. It does not appear that the volume of movement to New Orleans by way of the ocean and Gulf lines is sufficient to affect the rail rates charged by carriers operating from Chicago and other interior points. As was said in *Transcontinental Rates*, 46 I. C. C., 236, 276:

It is fundamental that if relief from the fourth section is to be granted as to any traffic there must exist at the competitive point an actual necessity for the maintenance of the lower rate at that point. This necessity should be so controlling as to prevent the carrier from securing the traffic at higher rates.

Defendants did not undertake to justify the departures from the fourth section in rates to Birmingham and Montgomery, on the one hand, and the Gulf ports on the other, and no evidence was offered by them in connection with the fourth section applications assigned for hearing with the complaints. They refer on brief to the finding in *Fourth Section Violations in the Southeast, supra*, to the effect that the rates from Ohio River crossings, St. Louis, and Chicago to the port cities are subnormal and therefore not the proper measure of rates to the intermediate points. In the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, we found that there is no longer any water competition of such a character as to compel the depression of the all-rail rates between Mississippi River points, and accordingly denied relief from the long-and-short-haul provision of the fourth section between New Orleans and points on the Mississippi River, St. Louis, and south, to the extent there in issue. Following that proceeding it was held in *Meridian Traffic Bureau v. Director General*, 57 I. C. C., 107, that the maintenance of lower rates from Chicago and from Ohio and Mississippi river crossings and related points to New Orleans and Mobile than to Meridian and Jackson, intermediate points, subjected the latter to undue prejudice. A similar conclusion was reached in *Chamber of Commerce, Moss Point, Miss., v. L. & N. R. R. Co.*, 57 I. C. C., 112, respecting rates to Pascagoula and Moss Point, Miss., located between New Orleans and Mobile.

In themselves, the rates to New Orleans are not in issue, and we express no opinion concerning maximum or minimum reasonable rates to that point. On the other hand, in the light of the various rate comparisons, the incidents of the transportation and the indicated earnings, as of the period covered by the record and down to Feb-

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Increased Rates, 1920, supra, the assailed rates to Birmingham, Montgomery, and Dothan could not with certainty be said to have passed the bounds of reasonableness, although they appear to us to have approximated those limits according to standards then obtaining; and we so find. We further find that the relationships complained of were, are, and for the future will be unduly prejudicial to complainants and unduly preferential of their competitors at New Orleans to the extent that the rates to Birmingham or Montgomery have exceeded or may exceed the contemporaneous rates to New Orleans, and to the extent that the rates to Dothan exceeded by more than 7.5 cents per 100 pounds, on the bases effective next prior to *Increased Rates, 1920, supra*, and may exceed by more than 10 cents per 100 pounds for the future, the contemporaneous rates to New Orleans.

A finding of unreasonableness would afford no basis for reparation to complainants, as it is disclosed that all the shipments in question were purchased f. o. b. destinations, the delivery prices having been computed at the Chicago market price plus the respective freight rates from Chicago, regardless of the points of origin, the applicable freight charges in all cases having been prepaid by the vendor shippers; and the requisite proof of damage resulting from the undue preference and prejudice found to exist also is wanting. Reparation is accordingly denied.

The applications for relief from the long-and-short-haul provision of the fourth section of the act will be denied.

Appropriate orders will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1205.
SWITCHING AND ABSORPTION AT PARIS, S. C.

Submitted December 30, 1920. Decided January 15, 1921.

Cancellation of charge for switching service at Paris, S. C., which it is physically impossible to render, the switching track having been removed, permitted upon the filing here by respondent of tariff including Paris in the Greenville, S. C., switching limits.

Chas. J. Rivey, jr., and H. L. Walker for Southern Railway Company.

H. J. Haynsworth and J. C. McGowan for Piedmont & Northern Railway Company.

C. F. Haynsworth for Minter Homes Company and Bradley Bonded Warehouse Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, DANIELS, AND EASTMAN.

BY DIVISION 3:

By schedule filed to become effective September 20, 1920, the Southern Railway proposes to cancel its switching charge for interchange of cars with the Piedmont & Northern Railway at Paris, S. C. Upon protest of the Minter Homes Company, which manufactures sectionally built houses and specializes in industrial housing, and the Bradley Bonded Warehouse Company, a mail-order house dealing largely in salvaged government supplies, the schedule was suspended until February 17, 1921.

The Piedmont & Northern is a standard-gauge electric line extending from Spartanburg to Greenwood, both in South Carolina, a distance of 128 miles. It parallels the Southern all the way, serves generally the same stations, and at no point is more than two or three thousand feet from the rails of the Southern. It is equipped for interchange of traffic with steam roads. At Paris the two roads are about 150 feet apart. Paris is a flag station on the Southern.

In March or April of 1920 the Minter Homes Company purchased a part of the property of the former Camp Sevier, situated just south of the main line of the Southern at Paris and separated from the Piedmont & Northern by the tracks of the Southern. During the war the Piedmont & Northern, in order to reach Camp Sevier,

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built a track about a thousand feet long connecting with the south-bound track of the Southern. The Southern provided the frogs and switches for the connection with its track and a minor portion of the track. It switched freight to and from the Piedmont & Northern at a tariff charge of \$2 per car, now \$2.50, which was absorbed by the Piedmont & Northern on competitive traffic. On June 28, 1920, about two or three months after the transfer of the camp property and several months after the use of the connecting track for government shipments had ceased, the Southern took up about 230 feet of the track, thus destroying the connection. A witness for the Southern stated that if the cancellation is allowed to become effective the Southern will extend the Greenville switching limits to include Paris, and, with our permission, will do so upon less than statutory notice. The reasons given for cancellation of the Paris switching charge are that the purpose of the interchange track, which was the handling of Camp Sevier shipments, has been served; that at the time the track was taken up there was no traffic moving over it of any consequence, only one or two cars having been interchanged for the Minter Homes Company; and that the subsequently developed and now increasing traffic of protestants can be adequately taken care of by effecting interchange with the Piedmont & Northern at Greenville, S. C., 4.4 miles from Paris, as at present.

One of protestants' objections to discontinuance of the interchange at Paris is the alleged delay in effecting interchange at Greenville. The witness for the Minter Homes Company testified that in practically every instance in which cars have been ordered from the Piedmont & Northern since the interchange has been at Greenville a delay of from three to six or seven days occurred. In at least one instance, according to the information of this protestant, the delay occurred after receipt of the cars by the Southern, and in all instances at a time when the delay could not be chargeable to a shortage of cars on the Piedmont & Northern. The Southern, on the other hand, states that it is a rare occurrence when cars are not switched from the Piedmont & Northern at Greenville to Paris on the day of receipt from the latter, or the day after.

Another objection of protestants is that the volume of traffic on which the Piedmont & Northern will absorb the switching charge of the Southern will be decreased and the charge to the shipper correspondingly increased. This is because the amount which, under the proposed adjustment, the Piedmont & Northern will be expected to absorb will be increased from \$2.50 a car to the Southern's distance tariff rate from Greenville, with a minimum of \$15 a car. The Piedmont & Northern estimates that it could not absorb the latter amount on fully 50 per cent of the interchanged traffic on account of insuffi-

cient revenue therefrom, with the result feared by protestants. The increased absorption basis is said by the Southern to be the same as in effect at Spartanburg, S. C., and Charlotte, N. C.

The volume of traffic affected by the removal of the connection and the proposed cancellation can not accurately be forecast upon this record, for the reason that the Minter Homes Company is just developing its plant for outbound shipments. During the six months ending October 31, 1920, it paid the Southern \$46,863 on incoming freight routed over that line. Its parent concern, located at Huntington, W. Va., and engaged in like business, is said to be one of the largest shippers in that section. The interchange service would be required on perhaps not more than 10 per cent of its traffic. During November last the Bradley Bonded Warehouse interchanged between the two roads 17 cars and the United States Public Health Service Hospital 14 cars through the Greenville yards.

The lawfulness of the Southern's action in taking up the connecting track is questioned by protestants and by the Railroad Commission of South Carolina, which has condemned the Southern's action in this respect and has ordered restoration of the track.

The question, suggested of record, as to whether the interchange at Greenville is not really a compliance with the present tariff provision, must be answered in the negative. While that provision is that the "Southern Railway will switch carload traffic between point of interchange with the Piedmont & Northern Railway and Camp Sevier, S. C., at \$2 per car," the item comes under the heading "Paris, S. C." and evidently contemplates an interchange between the two roads at that point. The proposed tariff provision comes under the same heading and reads: "Item 1060 is hereby canceled. No switching arrangements in effect at Paris, S. C. (Increase)." As stated, the above charge of \$2 per car has been increased to \$2.50 per car.

Upon this record it is clear that the track connection was installed to assist the government in the handling of troops and war supplies. After the abandonment of the camp the interchange business practically disappeared. At the time the connection was removed in June, 1920, the Minter Homes Company had just begun business at the camp site, and its treasurer testified that it had received but one or two cars over this connection and had not begun to make outbound shipments. Respondent's witness testified that the movement of traffic over this track for the months immediately prior to the removal of the track was as follows: March; none; April, none; May, one car; June, two cars. It would therefore appear that the assumption of the Southern at the time the track was removed that the necessity for the connection had ceased was not without justification. The question whether we could require reestablishment of

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the connection is not properly before us for decision upon this record. Witnesses for protestants admitted that the maximum increase in transportation charges under the adjustment which the Southern has expressed willingness to put in force if the suspended cancellation is allowed to become effective would be small, and that their principal interest is in the matter of expeditious service. The only question before us for determination upon this record is the propriety and lawfulness of the cancellation of the published charge for the service which it is no longer physically possible for respondent to render.

We find that respondent, upon extending, by proper tariff publication, the switching limits of Greenville so as to include Paris, as proposed by it, will have justified the proposed cancellation. Authority is hereby granted to so extend the Greenville switching limits upon five days' notice, and when such tariff is filed our order of suspension herein will be vacated. The tariff filed under this authority should bear on its title-page the following notation: "Issued upon five days' notice by authority of Interstate Commerce Commission's report in I. & S. Docket No. 1205." This finding is without prejudice to the right of shippers in an appropriate proceeding to seek reestablishment of the canceled charge should the track connection, as a result of the order of the state commission to which reference has already been made, or otherwise, be later restored.

DANIELS, Commissioner, dissents.

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No. 10920.

NASON COAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
ET AL.

Submitted October 23, 1920. Decided January 13, 1921.

Rate on bituminous coal, in carloads, from Nokomis, Ill., to Union Grove, Wis., found to have been unreasonable. Reparation awarded.

W. A. Holley for complainant.

D. P. Connell and *L. P. Day* for defendants.

John F. Finerty and *Alex. M. Bull* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner and the case was orally argued before us.

Complainant, an Illinois corporation, by complaint seasonably filed, as amended, alleges that the rate charged by defendants on a carload of bituminous nut coal shipped November 12, 1918, from Nokomis, Ill., to Union Grove, Wis., was unjust and unreasonable to the extent that it exceeded \$1.82 per net ton. The prayer is for reparation only. Rates will be stated in amounts per net ton.

The shipment, weighing 105,500 pounds, was delivered to the Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, without routing instructions, and moved over that line to Danville, Ill., the New York Central to Chicago, Ill., and thence to destination over the Chicago, Milwaukee & St. Paul. Charges were collected in the sum of \$114.48 at the applicable rate of \$2.17, composed of a proportional rate of \$1.22 to Chicago and 95 cents beyond. On May 20, 1919, a joint rate of \$1.82 was established.

Nokomis is in the so-called Springfield, Ill., coal district, about 55 miles southeast of Springfield, and is served by the Big Four and the Chicago & Eastern Illinois. Union Grove is 70 miles north of Chicago on a branch line of the Chicago, Milwaukee & St. Paul, which connects with its main line at Corliss, Wis. Immediately prior to July 1, 1917, the rate on coal from Nokomis to Union Grove over the

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route of movement was \$1.37, composed of a proportional rate of 77 cents to Chicago and 60 cents beyond. On that date, following *The Fifteen Per Cent Case*, 45 I. C. C., 303, the proportional rate to Chicago was increased 15 cents, and on July 20, 1917, the local rate beyond was likewise increased 15 cents, making the combination rate \$1.67. On June 25, 1918, the proportional rate to Chicago was increased to \$1.22 and the rate beyond to 95 cents under general order No. 28 of the Director General of Railroads, resulting in a combination rate of \$2.17.

Complainant contends that in constructing the through rate from and to the points in question the total rate and not the respective components thereof should have been increased by the amounts specified in *The Fifteen Per Cent Case* and general order No. 28, and that had this been done a rate of \$1.82 would have been applicable from Nokomis to Union Grove at the time the shipment moved.

Complainant's witness testified that, prior to the decision in *The Fifteen Per Cent Case*, through rates generally from the Springfield district were constructed on basis of the combination of the proportional rate to Chicago and the local rate beyond. Complainant cites a rate of \$1.82 applicable when the shipment moved, from mines in the Springfield district on the Chicago & Eastern Illinois and Chicago & Alton and the Illinois Central to Union Grove and from Nokomis to Milwaukee and Racine, Wis., by way of the Big Four and the Chicago & North Western, and to Burlington, Wis., by way of the Big Four and the Minneapolis, St. Paul & Sault Ste. Marie. It is pointed out that the latter rate represents an increase over the former through combination rates of but 15 cents under *The Fifteen Per Cent Case* and 30 cents under general order No. 28. Milwaukee is 30 miles north, Racine 15 miles east, and Burlington 12 miles west of Union Grove.

The Big Four and the Chicago & Eastern Illinois operate over the same tracks from Nokomis to Pana, Ill., a distance of about 13 miles. When the shipment moved a rate of \$1.82 was applicable from Nokomis to Union Grove over the Chicago & Eastern Illinois and Chicago, Milwaukee & St. Paul. Complainant's witness testified that the car in which the shipment was loaded was furnished by the Big Four and that the shipment was billed out over that road without knowledge that the rate over that line was higher than that over the Chicago & Eastern Illinois.

The defendants urge that the rate of \$1.82 over the route of shipment was established to meet the rate of carriers operating over shorter routes. The distance from Nokomis to Union Grove via the Chicago & Eastern Illinois and the Chicago, Milwaukee & St. Paul is 288 miles and over the route of shipment 325 miles. The \$1.82 rate
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was in effect to Union Grove from mines in the Springfield district over longer routes than that by way of which the shipment moved.

Complainant paid and bore the charges in excess of those that would have accrued at the rate of \$1.82.

We find that the rate assailed was unreasonable to the extent it exceeded \$1.82; that complainant made the shipments as described, and paid and bore the difference between the charges collected and those which would have accrued at the rate herein found reasonable, and to that extent has been damaged and is entitled to reparation in the sum of \$18.47, with interest.

An appropriate order will be entered.

GO I. C. C.

No. 10626.

ROCKFORD LUMBER & FUEL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted January 16, 1920. Decided January 13, 1921.

Reconsignment rule providing charges for diversion or reconsignment to points within switching limits before placement, heretofore approved in *Reconsignment Case*, 47 I. C. C., 590, affirmed. Complaint dismissed.

C. S. Bather for complainants.

A. S. Brooks, R. V. Fletcher, and Robert H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

By DIVISION 1:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by complainants, and the case was orally argued before us.

This complaint, filed May 5, 1919, by two corporations engaged in the coal business at Rockford, Ill., attacks rule 11 of the general reconsignment rules of the defendants, alleging that the charges exacted in the application of this rule are unjust, unreasonable, and unjustly discriminatory. We are asked to require the defendants to cease applying the rule to complainants' shipments of coal received at Rockford, to award reparation for the sums collected thereunder on shipments moved within two years prior to the filing of the complaint, and to waive collection of undercharges in instances where such charges have not been paid.

Rule 11 is in terms as follows:

Rule 11. *Diversion or reconsignment to points within switching limits before placement.*—A single change in the name of consignee at destination and (or) a single change in or a single addition to the designation of his place of delivery at destination will be allowed:

(a) Without charge, if order is received in time to permit instructions to be given yard employees prior to arrival of car at destination, or if the destination is served by terminal yard, then prior to arrival at such terminal yard.

(b) At a charge of \$2 per car if such orders are received in time to permit instructions to be given to yard employees within twenty-four (24) hours after

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arrival of car at destination, or if the destination is served by a terminal yard, then within twenty-four (24) hours after arrival at such terminal yard.

Except that on shipments of coal originally consigned to accredited terminal coal pool associations and ordered delivered to final consignee within twenty-four (24) hours after arrival of car at terminal yard, there will be no charge.

(c) A charge of \$5 per car if such orders are received subsequent to twenty-four (24) hours after arrival of the car at destination, or if the destination is served by a terminal yard then subsequent to twenty-four (24) hours after arrival at such terminal yard.

(Note) In computing time Sundays and legal holidays (national, state and municipal) will be excluded. When a holiday falls on Sunday the following Monday will be excluded.

Complainant Rockford Lumber & Fuel Company has four yards located in different parts of Rockford, designated as yards 1, 2, 3, and 4, at which it receives carload shipments of coal. All coal received by it is consigned simply to it at Rockford without specifying any particular yard at which delivery is to be made. It was testified by defendant Chicago & North Western that it was its practice of seven years' standing, growing out of an understanding with this complainant, to switch all cars direct to its yard No. 1, and that the yardmaster for the complainant there instructs the switch-train master where delivery of the different cars shall be made. These deliveries are made either at one of the four yards of this complainant, or to some industry at Rockford designated by it. The question arises whether the service rendered under this method of operation is a switching service or a reconsignment. If it is a switching service it would be subject to rule 13, as follows:

Rule 13. Diversion or reconsignment to points within switching limits after placement.—Cars that have been placed for unloading and which are subsequently reforwarded without being unloaded to a point within the switching limits of the billed destination will not be subject to diversion or reconsignment charges, but will be subject to the switching or local rate in addition to the rate from point of origin to billed destination.

NOTE.—Where no switching tariff is in effect the charge will be ten (10) cents per ton of 2,000 pounds, minimum Five (\$5) Dollars per car.

From the record it does not appear that the cars are placed for unloading at yard 1 before the switch-train master receives directions from the complainant's yardmaster as to the placement of the several cars. The movement would not come under the provisions of rule 13 therefore, because this rule by its terms applies only to further movements after cars have been "placed for unloading." The service must be deemed to be a reconsignment service within the terms of rule 11.

Complainants have offered no testimony going to the unreasonableness *per se* of the charges made applicable by the rule, but rest their case on a showing of the method of operation employed

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in the Rockford switching district and contend that the rule itself is unjust and unreasonable because no service warranting the charges is rendered, and that they therefore constitute penalty charges, which they claim are unlawful. Complainants' testimony describing the method of handling coal shipments at Rockford and the necessity for preserving that method discloses nothing that was not fully considered in *Reconsignment Case*, 47 I. C. C., 590, wherein we found the carriers had justified the charges imposed by this rule. We there fully reviewed the conditions relied upon here, including the contention that the service is covered by the line-haul rate, saying at page 630:

Reconsignment, as a special service, warrants a proper charge in addition to the rate.

From the showing by the complainants it appears that there must be extra clerical work rendered in order to effect the transportation service they require. From the more complete showing of operation made by the carriers it appears that there are actually extra-switching and hold-track services rendered, depending upon the time of arrival of the train and the time placement orders are received.

Whatever the facts may be as to the amount of service, the purpose of this rule is to relieve congestion in the railroad terminals by inducing the original billing of freight direct to the point of unloading. In *Reconsignment Case*, *supra*, at pages 631, 632, we said:

The charge of \$5 proposed under sub-division (c) is admitted to be in part a penalty and is not based entirely upon additional service. * * * It does not appear, however, that a charge of \$2 is more than compensatory. * * * The necessity of forcing the movement of cars held for orders is greater than in the case of cars held for loading or unloading. In the former case the cars are in the carriers' yards, while in the latter they are usually on public delivery or industrial tracks.

The sufficiency of present demurrage charges to prevent undue detention was urged by protestants in opposing other proposed rules. There is merit in the carriers' contention that a reconsignment charge is also necessary to effect the purpose. With the allowance of free time under the demurrage rules, the shipper hopes that he will be able to dispose of his shipment before demurrage accrues, and is inclined to minimize the hazard of failure; but with the certainty before him of the charge covering all detention he will make a greater effort to ship without reconsigning, or at least to reconsign without detaining cars.

Complainants further contend that they are unjustly discriminated against because of the fact that the rule excepts shipments consigned to terminal coal-pool associations. It appears, however, that there is no terminal coal-pool association on the lines of any of the defendants. There were terminal coal-pool associations at Norfolk and

Newport News, Va., and Cleveland, Ohio, which were operated to facilitate the transshipment of cargo coal during the war; but they are not shown to have been other than institutions for the public benefit. Further discrimination is urged, due to the fact that defendant Chicago, Milwaukee & Gary Railway makes no charge on reconsignments of intrastate coal. It is not shown, however, that any intrastate coal moved into Rockford.

We find that the rule, designed for this purpose, is not unreasonable or unjustly discriminatory, and that it has not resulted and does not result in the application of unreasonable charges on complainants' shipments of coal.

An order will be entered dismissing the complaint.

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No. 10764.¹

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA RAIL-
ROAD COMPANY, ET AL.

Submitted October 25, 1920. Decided January 13, 1921.

Rate on crude sulphur (brimstone), in carloads, from New York to Philadelphia, Pa., Paulsboro and Carney's Point, N. J., and from Baltimore, Md., to Philadelphia, Pa., found unreasonable. Reparation awarded and reasonable basis prescribed for the future.

Harvey S. Farrow for complainant.

Henry Wolf Bikelé for defendants in No. 10764 and Sub-No. 1.

William Ainsworth Parker and *Francis R. Cross* for defendants in No. 10789.

Adams Dodson and *Henry Wolf Bikelé* for defendants in No. 11176.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was argued orally before us.

These cases involve common issues and will be disposed of in one report. Complainant is a corporation engaged in the manufacture of explosives, paints, and chemicals, at Philadelphia, Pa., Paulsboro and Carney's Point, N. J., and elsewhere, with its principal offices located at Wilmington, Del. By complaints seasonably filed it alleges that the sixth-class rates applied to the transportation of numerous carload shipments of bulk crude sulphur (brimstone) from New York harbor to Philadelphia, Paulsboro, and Carney's Point, and from Canton Station, Baltimore, Md., to Philadelphia, during the period April to September, 1918, were unjust and unreasonable. We are asked to award reparation and to establish just and reasonable rates for the future. Rates will be stated herein in cents per 100 pounds. The essential details of the shipments are as follows:

¹ This report also embraces No. 10764 (Sub-No. 1), Same v. Same; No. 10789, Same v. Director General, as Agent, Canton Railroad Company et al.; and No. 11176, Same v. Director General, as Agent, Pennsylvania Railroad Company et al.

Com- plaint No.	From—	To—	Route.	Dis- tance.	Num- ber of cars.	Aver- age weight.	Rate.	
							Prior to June 25, 1918.	June 25, 1918.
10764.....	N. Y. Harbor...	Philadelphia.	Jersey City and P. R. R.	Miles. 109	31	Pounds. 75,457	Cents. 11.5	Cents. 14.5
10764 (Sub- No. 1).	do.....	Paulsboro....	Manhattan piers, P. R. R. and W. J. & S. S.	112	74	75,457	12.5	17
11176.....	do.....	Carney's Point.	do.....	119	51	71,200	16	20
10780.....	Canton docks, Baltimore.	Philadelphia.	Canton R. R., B. & O.	93	29	76,957	11	14

Complainant contends that a just and reasonable rate to have applied to the New York-Philadelphia shipments would have been 9 cents prior to and 11.5 cents on and after June 25, 1918; to Paulsboro, 10 cents prior to and 12.5 cents subsequent to June 25, 1918; to Carney's Point, 12.5 cents; and on the Baltimore-Philadelphia shipments, 8 cents. Reparation is asked on this basis. There was no movement of sulphur between New York and Carney's Point or between Baltimore and Philadelphia subsequent to June 25, 1918, but a rate for the future is asked from Baltimore to Philadelphia not to exceed 10 cents, and from New York to Carney's Point not to exceed 16 cents. Based on the average loading, the ton-mile and car-mile earnings under the rates applicable prior to June 25, 1918, were as follows:

	Per ton-mile.	Per car-mile.
New York to Philadelphia.....	Miles. 21	Cents. 79.61
New York to Paulsboro.....	24.1	90.95
New York to Carney's Point.....	28.8	95.85
Baltimore to Philadelphia.....	23.6	91.02

By way of comparison, complainant shows car-mile earnings on crude sulphur, under commodity rates in effect prior to June 25, 1918, from New York to various points in Pennsylvania for distances of 193 to 304 miles, which range from 46.88 cents for the former distance to 29.78 cents for the latter.

Crude sulphur in this territory moves largely on commodity rates less than the classification basis. The commodity rates shown in various exhibits range from 63.15 to 96 per cent of sixth-class rates. In central freight association territory, by exception to the official classification, crude sulphur takes 75 per cent of sixth-class rates. In southern classification territory this commodity moves on fertilizer rates. Complainant cites *Union Sulphur Co. v. B. & O. R. R.*
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Co., 89 I. C. C., 349, which related to increased commodity rates voluntarily established by the carriers on crude sulphur from Baltimore and other Atlantic ports to points in central freight association territory. We found in that case that defendants had justified the commodity rates, which were based on 80 per cent of the sixth-class rates.

Crude sulphur moves in considerable volume from Louisiana and Texas, usually by rail-and-water routes from the Gulf ports to the Atlantic seaboard, but during the war and thereafter all-rail routes were used because of vessel shortage. It was testified for complainants that in the future most, if not all, of the sulphur from the Texas and Louisiana fields destined to points within a reasonable distance of New York, Baltimore, and other Atlantic ports will again move by water through these ports. The record does not show whether future shipments to Philadelphia through the port of Baltimore are likely, and those here in question seem to have been isolated shipments. For this reason defendants opposed the establishment of a commodity rate lower than the rate charged, on the ground that the shipments in controversy were such as class rates are intended to cover, and that commodity rates are ordinarily established only in cases where the volume of traffic is substantial and constant, and not occasional or sporadic as in that instance.

Complainant contends that there is no unusual difficulty of operation encountered in hauling the traffic from New York to Philadelphia and points in New Jersey, such as is the case in operating from the ports to points in central freight association territory, where mountainous country has to be traversed and the operating costs are therefore greater. It argues, therefore, that if the scale approved by the Commission in the *Union Sulphur Co. Case*, *supra*, is a proper charge for the haul through the more expensively operated mountainous territory, it should certainly not be exceeded in fixing a rate from New York to Carney's Point and the other points involved.

We find that the rates charged on the shipments involved were unreasonable to the extent that they exceeded 80 per cent of the sixth-class rates in effect from and to the same points, and for the future will be unreasonable to the extent that they exceed or may exceed 80 per cent of the sixth-class rates at the applicable classification minimum, 40,000 pounds; that the complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those that would have accrued under rates herein found reasonable; and that it is entitled to reparation. Complainant should comply with rule V of the Rules of Practice. An appropriate order will be entered.

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No. 11261.

FORT DODGE COMMERCIAL CLUB

v.

DIRECTOR GENERAL, CEDAR RAPIDS & IOWA CITY
RAILWAY COMPANY, ET AL.

Submitted July 30, 1920. Decided January 13, 1921.

Class rates from Fort Dodge, Iowa, to certain points in southwestern Minnesota, eastern South Dakota, and southeastern North Dakota not found unreasonable, but found unduly prejudicial to Fort Dodge and the traffic thereof in so far as they exceed the class rates contemporaneously in effect from Des Moines, Iowa, to the same destinations.

J. H. Henderson and L. M. O'Leary for complainant.

A. P. Humburg, M. M. Joyce, D. C. Edwards, and Charles Schackell for defendants.

Oliver E. Sweet, D. L. Kelley, and E. M. Hendricks for Board of Railroad Commissioners of the State of South Dakota, intervenor.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS **McCHORD, MEYER, AND AITCHISON.**

McCHORD, Commissioner:

No exceptions to the examiner's proposed report in this case, duly served upon the parties, have been filed.

By complaint filed February 24, 1920, as limited at the hearing, the Fort Dodge Commercial Club alleges that the class rates from Fort Dodge, Iowa, to certain stations on defendants' lines in southwestern Minnesota, eastern South Dakota, and southeastern North Dakota east of the Missouri River are unreasonable and unduly prejudicial. The prayer is for the establishment of reasonable and nonprejudicial rates for the future. The Board of Railroad Commissioners of the State of South Dakota intervened in support of the complaint. Rates hereinafter stated are in cents per 100 pounds and are those preceding the increases authorized in *Increased Rates*, 1920, 58 I. C. C., 229.

Fort Dodge is in the northwestern part of Iowa, 90 miles south of the Iowa-Minnesota state line and 85 miles northwest of Des Moines, Iowa. It has a population of about 25,000 and many manufacturing and jobbing interests. The destination territory to which the assailed class rates apply lies to the northwest of Fort Dodge. It includes points in Minnesota west of the line of the Minneapolis & St.

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Louis Railway from Minneapolis through Albert Lea and south of the line of the Great Northern Railway from Minneapolis through Willmar to Breckenridge. In North Dakota it includes only such stations, in the southeastern portion east of the Missouri River, as now have joint class rates from Fort Dodge, and in South Dakota only the territory east of the Missouri River is embraced.

Fort Dodge is served principally, as to north and south traffic, by the Chicago Great Western, the Illinois Central, the Minneapolis & St. Louis, and the Fort Dodge, Des Moines & Southern, which, with other lines in this territory, are defendants.

The complaint is essentially against the existing rate relationship, although the intervener particularly seeks to show that the outbound rates from Fort Dodge to South Dakota points are unreasonable. The principal points alleged to be unduly preferred are Chicago, Ill., such Mississippi and Missouri river crossings as St. Paul and Minneapolis, Minn., St. Louis, Mo., and Sioux Falls, S. Dak., and interior Iowa points. Representatives of a number of Fort Dodge manufacturers and distributors of plumbing, heating, and mill supplies, and of road machinery, metal sheets, hosiery, underwear, and clothing appeared at the hearing and testified as to competition from such points and the amounts out of the rates which they absorb to get a portion of the business in the area in question. The complainant seeks rates no less favorable than those of Fort Dodge's competitors on outbound traffic to that territory.

The rate situation of Fort Dodge is in many respects similar to that of Des Moines outlined in *Greater Des Moines Committee v. C., St. P., M. & O. Ry. Co.*, 42 I. C. C., 65. Fort Dodge is 192 miles from Dubuque, the nearest Mississippi River crossing, via the Illinois Central, and 85 miles northwest of Des Moines, which is 158 miles from the Mississippi River. Class traffic from points in the east to both interior cities properly moves on higher rates than does traffic to the Mississippi River cities. The differences correspond to the proportional rates from the Mississippi River crossings, given below:

Mississippi River to—	Classes. ¹									
	1	2	3	4	5	A	B	C	D	E
Fort Dodge.....	Cents. 50	Cents. 37.5	Cents. 29	Cents. 22.5	Cents. 19	Cents. 20	Cents. 16.5	Cents. 13	Cents. 10.5	Cents. 9.5
Des Moines.....	40	30	22.5	17.5	14	16.5	13	10.5	9	7.5

¹ These rates likewise apply in the reverse direction.

The above rates from the Mississippi River to Fort Dodge are based on our decision in *Interior Iowa Cases*, 46 I. C. C., 39, and were recently approved in *Fort Dodge Commercial Club v. Director General*, 57 I. C. C., 343. Complainant points out that, while it thus

pays higher rates on inbound traffic than either the Mississippi River cities or Des Moines on outbound traffic to the destination territory herein, Fort Dodge is "set back at the river" so far as rates are concerned. That is, the outbound rates are generally on the Mississippi River basis. The rates are not always the same from Fort Dodge as from the Mississippi River crossings, however, as the Minneapolis & St. Louis Railroad has published rates to points on its line from Fort Dodge on the same basis as is applicable from Des Moines, and the Des Moines basis also applies to certain points in North Dakota.

The rate comparisons submitted by complainant to support its position that the rates complained of are unreasonable and unduly prejudicial may be summarized in the following statement of the first-class rates and the distances from Fort Dodge and competing jobbing points to a number of the destination points:

To—	From Fort Dodge.		From Dubuque.		From W. Keithsburg.		From St. Louis.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Ellsworth, Minn.....	123	75	320	75	361	75	533	100
Wilmot, Minn.....	162	81.5	315	81.5	361	81.5	572	109
Clear Lake, S. Dak.....	225	97.5	414	97.5	460	97.5	635	134
Elmore, Minn.....	81	81.5	253	81.5	291	81.5	492	99
Salem, S. Dak.....	266	104	457	104	505	104	697	131.5
Carthage, S. Dak.....	300	112.5	492	112.5	540	112.5	732	142.5
Traverse, Minn.....	153	81.5	286	81.5	340	81.5	564	82.5
Oakes, N. Dak.....	420	136.5	611	136.5	659	136.5	851	175
Lebanon, S. Dak.....	416	155	616	155	665	155	857	175
Blue Earth, Minn.....	90	81.5	224	81.5	277	81.5	502	90
Currie, Minn.....	291	110	325	110	378	110	588	110
Mitchell, S. Dak.....	298	112.5	489	112.5	537	112.5	721	135.5
Canton, S. Dak.....	188	87.5	350	82.5	394	87.5	576	104
Dolton, S. Dak.....	231	106.5	392	106.5	437	106.5	619	129
Alexandria, S. Dak.....	254	112.5	415	112.5	460	112.5	642	139

To—	From Des Moines.		From Chicago.		From St. Paul.	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Ellsworth, Minn.....	193	54	532	100	.....	.....
Wilmot, Minn.....	232	65	527	100	.....	.....
Clear Lake, S. Dak.....	295	91.5	626	114	.....	.....
Elmore, Minn.....	152	50	434	90	.....	.....
Salem, S. Dak.....	357	97.5	588	124	.....	.....
Carthage, S. Dak.....	392	106.5	623	132.5	.....	.....
Traverse, Minn.....	224	79	431	82.5	.....	.....
Oakes, N. Dak.....	511	139	759	151.5	.....	.....
Lebanon S. Dak.....	617	147.5	728	157.5	.....	.....
Blue Earth, Minn.....	162	60	420	90	.....	.....
Currie, Minn.....	248	86.5	521	119	.....	.....
Mitchell, S. Dak.....	381	104.5	621	124	.....	.....
Canton, S. Dak.....	236	76.5	535	104	318	71.5
Dolton, S. Dak.....	379	100	578	122.5	361	87.5
Alexandria, S. Dak.....	302	104	601	124	384	90

¹ Davenport.

While the other classes do not bear any definite relation to first class, the situation as to them is in general similar, varying only in degree.

From the above table it appears that, while the distances from Dubuque, Davenport, and West Keithsburg, all on the Mississippi River, to the points designated are from about 11 per cent to 250 per cent greater than the distances from Fort Dodge, the rates are the same. The Des Moines distances exceed the Fort Dodge distances by approximately 20 to 50 per cent to all destinations except one, while the rates from the former are, in all but one instance, from about 2 to 39 per cent less. The distances and rates from Chicago, St. Paul, and St. Louis show similar variations.

A number of comparisons were submitted by complainant showing that the rates on various commodities from points in the east to Fort Dodge, plus the rates from Fort Dodge to points in southwestern Minnesota and southeastern South Dakota, are higher in the aggregate than the in-and-out rates enjoyed by competing jobbing centers for total hauls of similar lengths. These comparisons indicate that, in spite of Fort Dodge's having in most instances an advantage in through distance, it has a disadvantage in rates ranging from 5 to 70.5 cents. Here, as in *Fort Dodge Commercial Club v. Director General, supra*, complainant referred particularly to the total distances and total freight charges on first-class traffic from New York City to Ceylon, Minn., which is directly across the Iowa state line, 94 miles northwest of Fort Dodge and located in what the witnesses consider its "natural trade territory." A comparison of the total distance and rate to Ceylon via Fort Dodge with the total distances and rates via 17 competing jobbing centers in Minnesota, Iowa, Missouri, and Illinois show that in all instances the mileage via Fort Dodge is about the same as or less than via any other point named, while Fort Dodge has a rate disadvantage of from 9 to 67.5 cents. However, the rates inbound are not in issue, and in any event the act does not require that in-and-out charges be equalized through all jobbing points. *Mobridge Grocery Co. v. C., M. & St. P. Ry. Co.*, 52 I. C. C., 307.

Intervener compared through first, second, third, and fourth class rates from Fort Dodge to typical South Dakota points via Chicago Great Western, or Fort Dodge, Des Moines & Southern or Minneapolis & St. Louis, and Chicago, St. Paul, Minneapolis & Omaha, Chicago & North Western, or Chicago, Milwaukee & St. Paul, with combinations of local rates over the Illinois Central from Fort Dodge via Sioux Falls to the same destinations. The following table shows typical examples of this comparison:

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To—	On—	Classes.			
		1	2	3	4
Ellis.....	C., St. P., M. & O. ¹	<i>Cents.</i> 94	<i>Cents.</i> 75	<i>Cents.</i> 54	<i>Cents.</i> 40
Do.....	do. ¹	77	65.5	47.5	38.5
Spencer.....	do. ¹	110	91.5	67.5	49
Do.....	do. ¹	95	80.5	58.5	47
Mitchell.....	do. ¹	112.5	97.5	71.5	56.5
Do.....	do. ¹	100.5	85	62	50
Canova.....	C. & N. W. ¹	104	90	65	45
Do.....	do. ¹	96	81.5	59	47.5
Higmore.....	do. ¹	151.5	127.5	97.5	70
Do.....	do. ¹	124	105	78.5	61.5
Pierre.....	do. ¹	152.5	130	100	75
Do.....	do. ¹	135.5	114	86	67
Madison.....	C., M. & St. P. ¹	96.5	81.5	60	44
Do.....	do. ¹	92.5	78	57.5	46
Westington Springs.....	do. ¹	131.5	107.5	81.5	59
Do.....	do. ¹	110.5	94	68.5	56
Selby.....	do. ¹	159	130	100	75
Do.....	do. ¹	139	117.5	88.5	69

¹ Through rate.² Combination of locals.

The through rates in the above comparison are on the Mississippi River basis; the combination of locals is on the basis of an interstate scale voluntarily established by the Illinois Central to Sioux Falls, plus a rate based on the South Dakota east-of-the-river scale beyond. The latter, it was testified, is an agreed scale published by the carrier after conferences with the Board of Railroad Commissioners of the State of South Dakota and with shippers.

The adjustment of through class rates from Fort Dodge to stations on the Chicago, Rock Island & Pacific in South Dakota via Iowa Falls, Iowa, was contrasted with the combination of local rates to the same points via Rock Rapids, Iowa, and with the through rates from Des Moines. The through rates from Fort Dodge are the same as the rates from upper Mississippi River crossings, while the distances from Fort Dodge are in every instance considerably less. The rates from Fort Dodge in practically all instances also exceed the rates from Des Moines.

It also was pointed out that to five stations on the Watertown & Sioux Falls Railway the published through rates of the Illinois Central in connection with the former road exceed in some instances the combination of intermediate local rates over the same routes by from 1 to 5 cents. Defendants answer that they understand such instances to be protected by appropriate fourth section applications, which were not set for hearing as no fourth section violations were alleged, but that if any unauthorized departures are found they will correct them. The lower combination of locals is made up of the Iowa distance scale to Sioux Falls, plus 110 per cent of the South Dakota east-of-the-river scale beyond, and does not include the charges for transfers at the junction.

Intervener also contrasted class rates from Fort Dodge and Sioux City to equidistant stations in South Dakota. A few illustrative examples are given below:

From—	To—	Dis- tance.	Classes.			
			1	2	3	4
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Fort Dodge.....	Hartford.....	187	80.5	68	40	39.5
Sioux City.....	Huron.....	185	71.5	59.5	47.5	33
Fort Dodge.....	Huron.....	280	108	91.5	67	53.5
Sioux City.....	Twin Brooks.....	282	87.5	74	50	44
Fort Dodge.....	Madison.....	212	92.5	78	57.5	46
Sioux City.....	Bradley.....	214	77.5	65	52.5	39

The rates from Fort Dodge in the above table are the combinations of local rates via Sioux Falls, not including transfer charges at the junction, these rates being less than the published through rates via other routes. The rates from Sioux City were established by the carriers and are on approximately the same basis as the South Dakota distance scale east of the Missouri River. However, the rates from Sioux City are for single-line hauls as opposed to two-line hauls from Fort Dodge. Various state and interstate distance scales applicable in this territory for distances ranging from 150 to 400 miles were submitted. It was testified that the state scales moved large volumes of traffic and that the South Dakota "east" scale is regarded by the intervener as a reasonable basis of rates to apply in this territory.

Defendants compared distances and rates from Fort Dodge to destinations in Minnesota, North and South Dakota with distances and rates from Mississippi River crossings and Des Moines, and also with rates from Fort Dodge which would result if the basis fixed in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, were applied. They maintain that the territory in which the latter scale applies has a higher traffic density. Complainant takes the position that this basis of rates was prescribed for application to traffic west of the Missouri River, and that that territory is generally recognized as entitled to a somewhat higher basis of rates than the region east of the Missouri River. An illustrative portion of the comparison with the Missouri River-Nebraska scale follows:

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From Fort Dodge, Iowa, to—	Classes.									
	1	2	3	4	5	A	B	C	D	E
Aberdeen, S. Dak., 429 miles:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Present Rates.....	124	104	75.5	56.5	41.5	48	41.5	37	28	24
Mo.-Nebr. Scale (1-line)....	122.5	104	86	73.5	55	61.5	43	37	30.5	21
Watertown, S. Dak., 344 miles:										
Present Rates.....	91.5	82.5	62	41.5	28	32	29	24.5	19	17.5
Mo.-Nebr. Scale (1-line)....	107.5	91.6	75.5	64.5	48.5	54	37.5	32.5	27	18.5
Sioux Falls, S. Dak., 173 miles:										
Present Rates.....	60	51	35.5	29.5	22	24	18	15	13.5	12
Mo.-Nebr. Scale (1-line)....	72.5	61.5	51	43.5	32.5	36.5	25.5	22	18	12.5
Mo.-Nebr. Scale (2-line)....	79	66.5	55	47.5	36	39.5	28	23.5	20	13.5
Salem, S. Dak., 216 miles:										
Present Rates.....	104	87.5	64	45	37	42.5	36.5	30	24	20
Mo.-Nebr. Scale (2-line)....	87.5	74	61.5	52.5	39.5	44	31	26.5	22	15
Redfield, S. Dak., 323 miles:										
Present Rates.....	130	112.5	80	60	44	51.5	44	39	30	25
Mo.-Nebr. Scale (2-line)....	110	93	77	66	50	55	39	33	28	19
Ellsworth, Minn., 123 miles:										
Present Rates.....	75	55	42.5	34.5	28	32	24.5	21	19	16.5
Mo.-Nebr. Scale (2-line)....	66.5	54	46.5	40	30	33	23.5	20	17	11.5
Luverne, Minn., 136 miles:										
Present Rates.....	87.5	69	49	37.5	30.5	32	27	24.5	20	16.5
Mo.-Nebr. Scale (2-line)....	69	58	48	41.5	31.5	34.5	24.5	20.5	17.5	12
Granite Falls, Minn., 263 miles:										
Present Rates.....	91.5	70.5	64	40	32.5	37.5	32.5	27.5	24	20
Mo.-Nebr. Scale (2-line)....	90	83.5	69	59.5	45	49.5	35	29.5	25	17
Appleton, Minn., 322 miles:										
Present Rates.....	94	82.5	66.5	44	35	39	35	30	25	21.5
Mo.-Nebr. Scale (2-line)....	110	93	77	66	50	55	39	33	28	19
Pipestone, Minn., 163 miles:										
Present Rates.....	91.5	78	54	38	31.5	32	31.5	24	19.5	17
Mo.-Nebr. Scale (2-line)....	76.5	64.5	53.5	46	34.5	38	27	23	19.5	13
Oakes, N. Dak., 429 miles:										
Present Rates.....	136.5	114	80	60	44.5	52.5	45	39	30	26.5
Mo.-Nebr. Scale (2-line)....	129	109	90	77.5	58.5	64.5	46.5	38.5	32.5	22
Fargo, N. Dak., 493 miles:										
Present Rates.....	115	100	80	55	44	44	39	35	29	24
Mo.-Nebr. Scale (2-line)....	140	118.5	98	84	63.5	70	49.5	42	35.5	24

Defendants insist that the movement of traffic to that part of the destination territory in South Dakota is to a great extent on branch lines, where the traffic density is lower than on the main lines, and introduced statistics of the Minneapolis & St. Louis showing traffic density of that carrier by states as follows:

State.	Mileage.	Traffic density.
	<i>Miles.</i>	<i>Tons.</i>
Illinois.....	92	1,582,807
Iowa.....	834	590,296
Minnesota.....	400	797,988
South Dakota.....	269	128,242

Excepting about 37 stations served directly by the Minneapolis & St. Louis and the Illinois Central, all traffic to this territory must move over two or more lines.

In *Greater Des Moines Committee v. C., St. P., M. & O. Ry. Co.*, *supra*, rates from Des Moines to this territory were considered and a basis was prescribed with relation to the rates applicable from the Mississippi River crossings. While Fort Dodge is from 43 to 100 miles nearer to most of the destinations in the instant case than is

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Des Moines, the rates from Des Moines are applicable mainly to single-line hauls as compared with hauls over two or more lines from Fort Dodge. The record, however, compels the conclusion that Fort Dodge should be on no higher basis than Des Moines.

We find that the rates assailed are not shown to be unreasonable, but that they are and for the future will be unduly prejudicial to Fort Dodge and the traffic thereof in so far as they exceed or may exceed the class rates contemporaneously maintained from Des Moines to the same destinations.

An appropriate order will be entered.

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No. 11049.

RICHARD GRIFFITH ET AL.
v.
CORTEZ H. JENNINGS ET AL.

Submitted October 19, 1920. Decided January 13, 1921.

1. Defendants, in the operation of their railroad, are common carriers of property subject to the interstate commerce act.
2. Their method of distributing coal cars during a period of car shortage to shippers on their line found not sufficiently systematic to warrant approval as reasonable for the future, but not shown to have injured complainants or to have resulted in unreasonable or unduly prejudicial distribution of cars.
3. Rates charged on coal moving from complainants' mine to Worth, Pa., not found unreasonable.

Albert A. Daub and Edward J. Ryan for complainants.

George A. Pearre and Gilmore S. Hamill for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

The issues involved in this proceeding were made the subject of a proposed report. Exceptions were filed by complainants and oral argument had.

Richard Griffith, William Hartman, Joseph Brown, and Jacob Kaplon are partners trading under the name of the National Coal Company. Their complaint, filed on December 2, 1919, names as defendants Cortez H. Jennings, W. Worth Jennings, and Ella C. Jennings, partners trading under the name of Jennings Brothers and operating a railroad known as the Jennings Railroad. It is alleged (1) that defendants failed to rate the mines of complainants located near Grantsville, Md., in violation of section 1 of the interstate commerce act; (2) that they subjected complainants to undue prejudice and disadvantage, in violation of section 3 of the act, by failing to give complainants their proper share of cars and by unduly preferring the Myers Coal Company and seven other competitors; (3) that the rate of 20 cents per ton charged for the transportation of coal from complainants' mines to Worth, Pa., is unjust and unreasonable.

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able, in violation of section 1 of the act; and (4) that defendants failed to file with the Commission and keep open for public inspection, schedules of rates and charges for transportation between different points on its line, and between such points and those on other lines, in violation of section 6 of the act. The Commission is asked to require defendants to file and publish their rates, and to rate complainants' mines and determine their proper proportion of cars; to establish just and reasonable rates for the future; and to award reparation on account of the alleged unreasonable rates charged and damages for the alleged failure to supply cars.

Defendants' answer, in addition to denying any violation of the interstate commerce act, states that their road is not a common carrier, "but was constructed as, designed for and has been used solely as an Industrial Railroad, or Plant facility connected with the lumber business of Defendants * * *."

By stipulation of the parties, a transcript of the testimony and record in an action in the district court of the United States for the district of Maryland, brought by the same complainants against the same defendants, was made a part of this record. But little testimony was given at the hearing before the examiner, the parties stating that the evidence introduced in court fully covered the situation.

The transcript of the record in the district court shows that on October 1, 1919, "Plaintiff with leave of the Court, in open Court, entered a Non Pros." Defendants' motion to strike out the judgment of "non pros" and enter a judgment for defendants, was denied.

Defendants' railroad extends south from Worth, where it connects with the Salisbury branch of the Baltimore & Ohio Railroad, through Grantsville to Jennings, Md., the terminal station. Beyond Jennings the road is changed from time to time to suit logging operations. The road, which is standard gauge, was completed in 1900. It is not incorporated. The distance from Worth to Grantsville is 4 miles and from Grantsville to Jennings 6 miles. The right of way was acquired by negotiation and purchase and not through the exercise of the power of eminent domain. The courts have not passed upon the status of the railroad, and defendants do not comply with any federal or state requirements applying to common carriers. Apparently they have carried for all persons "provided they paid the freight." It was testified by one of defendants' witnesses, "we never decline to haul for anybody." The traffic carried is described as "All sorts of farm products, timber products, lime, store goods, merchandise of all sorts; anything at all."

Defendants own 3 locomotives, 2 flat cars, and 15 or 16 logging trucks, but no cars suitable for the transportation of coal. None of the equipment is allowed to go off their line.

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The rate on coal from Grantsville to Worth was \$8 per car, and from points south of Grantsville 20 cents a ton. The freight rates were not filed with this Commission or with any state commission, but defendants kept a written schedule of rates in their office, "which was well known to people along the road," as stated by defendants' counsel.

Defendants do not participate in joint rates with the Baltimore & Ohio. Originally they collected freight charges for the trunk line, and the latter for them, but this practice was stopped several years ago. There were no arrangements for through billing. Any demurrage accruing on cars was assessed by the Baltimore & Ohio against defendants, who in turn collected from the individual shippers.

Complainants operated under lease a mine near Grantsville and about 2 miles from defendants' railroad. The duration of this operation was about 14 months, complainants' last shipment of coal being made on February 11, 1919. The number of miners employed varied, complainants placing the average at about seven or eight, while another witness gave the number as five. It was testified that more miners could have been used if cars had been available. Under the conditions existing during the period of operation, complainants found it necessary to let their miners go when their limited storage space, a bin containing about 150 tons, was fully occupied. The mining cars were hauled into the mine by a mule or pony and, on account of the slight descending grade, ran out by force of gravity after being loaded. The coal was hauled from the mine to the point of loading by means of automobile trucks and wagons. Complainants preferred box cars for their shipments as, under a general order of the fuel administrator, acting for the President, they would in using such cars be allowed to make an additional charge on their coal of not more than 75 cents per ton.

As stated above, the defendants own no cars suitable for the transportation of coal. The cars used by shippers on their line were furnished by the Baltimore & Ohio Railroad. The latter dealt with defendants, and not with individual shippers on the Jennings Railroad, in the matter of furnishing cars. Coal cars were turned over to defendants by the trunk line "merely as a courtesy," and only after the needs of mines on the Baltimore & Ohio had been cared for. The latter mines were rated by the Baltimore & Ohio, but those on the Jennings Railroad were not and received only surplus cars.

Prior to the war no coal was shipped over defendants' line as the veins are thin and coal prices were too low to render it profitable. Such coal as was mined was used locally and did not move by railroad. During the war there were about one dozen shippers of coal located on the Jennings Railroad.

Defendants' agents testified that there were no definite mine ratings for these mines, but that every effort was made to distribute cars fairly. The controlling elements were the productive capacity of the mines and the ability to load cars promptly. It was said that the work was not sufficiently steady to afford an accurate basis for determining the capacity of the mines.

Between January 1, 1918, and February 11, 1919, there were 681 carloads of coal shipped from mines on defendants' line. Of the 681 cars, 438 were box and 243 open-top cars. Of the shipments 50 were made by complainants; 112 by C. A. Bender, trading as the Myers Coal Company; 72 by W. M. Stanton; 13 by T. A. Maust; 76 by A. G. Livengood; 65 by S. J. Orndorf; 28 by R. H. Butler; and 55 by George Hoover. The disposition of the remaining cars is not disclosed.

In addition to the 50 cars mentioned, complainants shipped 4 carloads of coal in December, 1917, but the shipments made by others in that month are not shown.

Stanton and Livengood each operated two mines. During a portion of the time two mines were operated by Orndorf. While others are mentioned in the complaint, the charge of undue prejudice rests chiefly on the number of cars given to Bender and Stanton.

Bender operated only one mine, but it was testified that his force worked a great deal at night, in addition to the customary day work, and that he was exceptionally prompt in loading cars and almost invariably in position to accept empty cars. On the other hand, it was testified that complainants sometimes allowed demurrage to accrue, that their facilities for loading were inferior, and that on one occasion cars were not assigned to them on account of their failure to pay accrued freight charges, the check given in payment having been protested. The winter of 1917-1918 was unusually severe and, owing to the necessity of hauling for about one-half mile over a dirt road and the breakdown of their motor truck, there were occasions when complainants were unable to use cars which were offered to them. In one instance a car set for loading by them had to be taken to another shipper. Stanton's mines are tippie mines and are located on a siding owned by him which connects with the Jennings Railroad.

The shortage of coal cars on defendants' line was accentuated by an embargo dated April 26, 1918, prohibiting the shipment to points east of San Patch, Pa., on the Baltimore & Ohio, of box cars of a capacity less than 80,000 pounds. Since approximately 50 per cent of that road's box cars were of less than the capacity named and the great bulk of the coal shipped in box cars moved to New England, this reduced the number of cars available for those whose trade was with eastern points.

During the greater portion of the period in which complainants operated there were not enough cars to satisfy the needs of coal shippers on the Jennings Railroad. It was testified by eight shippers besides Bender and Stanton that they did not receive the number of cars needed, but that they had seen nothing to indicate unfairness in their distribution. During the latter portion of the period the demand for coal was light and empty cars were shipped off the line.

The Baltimore & Ohio Railroad is not a defendant in this proceeding, and the portion of paragraph (12), section 1, of the interstate commerce act reading—

It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply,

did not become law until February 28, 1920.

Upon consideration of the record we are of the opinion and find that defendants, in the operation of their railroad, are common carriers of property subject to the interstate commerce act; that defendants' method of distributing cars may not be approved as a reasonable rule for the future because it was unsystematic and afforded opportunity for undue preference of certain shippers and undue prejudice of others, especially where railroad employees were themselves interested in shipping coal; that complainants have failed to show that the distribution of cars was in fact unreasonable or unduly prejudicial or that they were damaged by the acts of defendants; and that there is not sufficient evidence of record to warrant a finding of unreasonableness of the rates assailed.

There is not sufficient showing in the record to enable us to prescribe rules for the distribution of cars for the future. Reasonable rules and regulations should be established. An order respecting the filing of rates would add nothing to the duties imposed upon carriers by the interstate commerce act.

The complaint will be dismissed.

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No. 10939.

BRYANT & CHAPMAN COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CENTRAL VERMONT
RAILWAY COMPANY, ET AL.

Submitted October 15, 1920. Decided January 13, 1921.

Rules, regulations, and practices governing the transportation of milk and cream, in less than carloads, from Cloverdale and Middlesex, Vt., to Hartford, Conn., found unreasonable and unduly prejudicial, and certain charges found to have been assessed and collected illegally. Refund of illegal charges required. Reparation denied.

Charles F. Black and *Allen Martin* for complainant.

J. W. Redmond and *Wm. R. McFeeters* for defendants.

John F. Finerty for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

MEYER, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed and oral argument had.

Complainant, a corporation engaged in the dairy-product business, by complaint filed October 8, 1919, alleges that the rates, rules, regulations, and practices applicable to and governing the transportation of milk and cream, in less than carloads, from Cloverdale and Middlesex, Vt., to Hartford, Conn., are unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and section 10 of the federal control act. It asks for establishment of reasonable rates, rules, regulations, and practices and for reparation.

Cloverdale is on the branch of the Central Vermont Railway extending east from Essex Junction to Cambridge Junction, 18 miles from the former point; and Middlesex is on the main line of the same carrier, 27 miles south of Essex Junction. Complainant operates creameries at Cloverdale and Middlesex, from which it ships milk and cream, principally cream, to itself at Hartford. These shipments move over the Central Vermont Railway to Windsor, Vt., the Boston & Maine Railroad to Springfield, Mass., and the New York, New Haven & Hartford Railroad beyond.

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Charges on the shipments here involved, except as specified below, were exacted at the applicable per can rates, the reasonableness of which was not upon hearing questioned. Charges at the per can rates for the actual number of cans shipped were collected daily from complainant. Where shipments were made in "open iced" milk cars, hereinafter called open iced cars, from points on the Central Vermont, additional charges at the per can rates, reduced to a per quart basis, were collected at the end of each month, beginning apparently with June, 1919, for the difference between the number of quarts actually shipped and 5,100 quarts. There was and is no provision made by defendants' tariff for the exaction of charges based upon the minimum number of quarts shipped. Charges assessed and collected in excess of those accruing on the basis of the actual number of cans transported therefore were not and are not legally applicable and must be refunded.

Shipments from Cloverdale are transported in baggage cars to Essex Junction, and thence to destination in open iced cars; those from Middlesex are transported the entire distance in open iced cars. Open iced cars are those for which the carrier supplies ice in summer and which are stopped en route to pick up less-than-carload shipments. The Central Vermont, in connection with the Boston & Maine Railroad, for a number of years has operated a special milk train from St. Albans, Vt., a point on the main line north of Essex Junction, to interstate destinations, particularly Boston. An open iced car for shipments to Hartford, hereinafter termed the Hartford car, is carried in this train by the Central Vermont to White River Junction, Vt., and from that point moves to destination in passenger trains of the Boston & Maine Railroad and the New York, New Haven & Hartford Railroad. The Hartford car during 1917 and 1918 was operated every other day from November 1 to approximately May 1, and every day during the other months of those years. In April, 1919, complainant was notified by the Central Vermont that daily open-iced car service between the points involved would be re-established for the summer only upon condition that daily shipments of not less than 5,100 quarts would be guaranteed by complainant. To this complainant agreed. In November, 1919, complainant was notified that the same minimum quantity would be required for every other day open-iced car service during the late fall and winter months.

Complainant contends that it is subjected to undue prejudice, because it is denied the use of baggage cars for its shipments on days when the open iced car is not operated, and because it is required to guarantee a minimum daily shipment of 5,100 quarts of milk and cream; while other shippers are unduly preferred in that they are

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not required to guarantee the shipment of any minimum quantity, and certain of them are afforded daily baggage-car service for shipments of milk and cream.

Defendants' tariff contains a rule which complainant maintains entitles it to baggage-car service on days when the open iced car is not operated. In April, 1918 and 1919, for about 10 days, shipments were made from Cloverdale to Hartford on days when the Hartford car was not operated. These shipments were carried in open-iced cars from Essex Junction to White River Junction, and beyond White River Junction in baggage cars on trains of the Boston & Maine Railroad and New York, New Haven & Hartford Railroad. Defendants, however, contend that this practice was unauthorized and was stopped as soon as it was brought to their attention. The rule is as follows:

Baggage car service on passenger trains—(a) Rates shown in Table No. 3 apply for the transportation of commodities named in this tariff in less-than-carload lots in baggage cars (no icing) on passenger trains between points where there is no open iced milk or refrigerator car service. (b) Between points where open iced milk or refrigerator car service is provided the rates in Table No. 3 will not be applicable.

Defendants' evidence is that the purpose of this rule is to provide for the transportation of milk and cream from and to points, principally branch-line points between which milk trains are not operated; that when points are given open-iced car service it is desired that all milk and cream shipments from such points shall be handled in the open-iced cars, and that, accordingly, they adopted the rule prohibiting the use of baggage cars for such shipments from points provided with open-iced car service.

The nature of the service, not its extent, is designated by the rule. The use of baggage-car service and rates is excluded where there is open-iced car service. Being provided with the open-iced car service from Middlesex, complainant is not permitted by the rule to employ baggage-car service and rates from that point, but as no open-iced car service is provided between Cloverdale and Essex Junction the rule does not apply to shipments from Cloverdale.

Statements were submitted by complainant tending to show that it sustained losses by the souring of several shipments of cream which defendants refused to accept for shipment on the days when the open-iced car was not operated, but there was no showing of damages which would justify an award of reparation under the interstate commerce act.

Defendants have offered, and still offer, baggage-car service for shipments not in excess of 25 cans from and to the points involved on days when the Hartford car is not operated, but complainant

desires to ship in excess of 50 cans a day, and therefore declines to avail itself of the offer. Presumably defendants' tariff rule hereinbefore considered would be modified if such shipments were to be made from Middlesex in baggage cars. Under the arrangement proposed, shipments would be handled in Central Vermont open iced cars to White River Junction and thence to destination in baggage cars of the Boston & Maine and the New York, New Haven & Hartford. The Boston & Maine refused to accept for transportation in this way shipments of more than 25 cans, maintaining that a greater number, on account of the lack of available space in baggage cars, would be subjected generally to long lay-over at White River Junction; and that, when space was available, the loading of cans would unduly delay its passenger trains.

In *Albree v. B. & M. R. R.*, 22 I. C. C., 303, 322, in suggesting establishment of less-than-carload rates on milk to be refrigerated by carrier, the Commission said:

We are of the opinion that upon reasonable assurance that at least 600 cans of milk will be offered the defendant should put in operation a car, but that it should not be required to do this for a less number.

The cans referred to were of $8\frac{1}{2}$ quarts capacity, the capacity of 600 such cans being 5,100 quarts. Complainant ships in 40-quart cans, 127 $\frac{1}{2}$ of which will contain 5,100 quarts. The Commission considered 5,100 quarts the minimum quantity of milk which the defendants in that case could reasonably require a shipper or combination of shippers to tender for transportation before the carriers would provide open-iced car service. This is the basis for the minimum shipment which the Central Vermont required complainant to guarantee to obtain daily service in the summer of 1919, and every second day service in the fall of that year and winter of 1920. The Central Vermont was not a party to the case cited.

Daily baggage-car service is provided for shipments of milk and cream from Barton, Vt., which is on the Boston & Maine Railroad approximately 90 miles north of White River Junction, to Springfield, Mass. From Northfield, Vt., a point on the main line of the Central Vermont intermediate to White River Junction from Middlesex, shipments to New Haven, Conn., are carried in the same car which complainant uses, and occasional shipments from two other points on the Central Vermont were made in this car during 1919. No guaranty of a minimum daily shipment is required of shippers at these points. Complainant competes with the consignees of shipments from Barton.

No open-iced car service is provided from Barton to Springfield, and shipments of milk and cream from Barton are carried in baggage cars at baggage-car milk rates on the regular passenger trains of

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the Boston & Maine. Shipments from Barton, according to defendants, average 21 to 25 cans a day, but complainant's witness testified that on a number of days shipments from Barton considerably in excess of 25 cans have been accepted and transported by the Boston & Maine, and a statement of the actual shipments from January to October, 1919, tends to confirm this testimony. The passenger trains from Barton, with one exception, are operated by the Boston & Maine through to Springfield. Shipments of milk and cream from Barton, in this one train, which does not run beyond White River Junction, are there loaded in the Hartford car when baggage-car space is not available on the connecting train. Complainant contends that the earnings from all such shipments in the Hartford car should be considered in arriving at the revenue which the 5,100-quart requirement is designed to produce. To this, answer is made that the Central Vermont, which requires the 5,100-quart shipment, furnishes the cars, operates them primarily for the transportation of shipments from points on its line, and, with the exception of revenue received from shipments originating at points on the Boston & Maine, which move from White River Junction to Windsor, must look for its compensation only to shipments from points on its line. The rails from White River Junction to Windsor are owned by the Central Vermont and are used under a trackage agreement by the Boston & Maine.

Shipments of milk and cream from Northfield to New Haven average 8 to 10 cans a day. Defendants insist that these shipments do not require through service, and could be carried in the open iced cars of the Boston milk train to White River Junction and thence in baggage cars to destination.

It was shown that in 1917 and 1918 several shippers at other points on the Central Vermont used the Hartford car, but that since 1919 complainant and the Northfield shipper are the only ones on the line of the Central Vermont who have used the Hartford car regularly. It was further shown that in 1917 and part of 1918 complainant maintained creameries at two other points on the Central Vermont Railway besides Cloverdale and Middlesex, and it was estimated that subsequent to the discontinuance of those creameries complainant's shipments decreased 35 per cent in the summer months and 75 per cent in the fall and winter months.

An exhibit was introduced to show that the Hartford car was operated at a loss during 1919. Three days are required for the round trip of a car between St. Albans and Hartford. To provide daily service the Central Vermont must furnish four such cars, and three cars are necessary to maintain every other day service. January and June were selected as representative months, and it was indicated

that the expense of operating three days in January and four in June during the every other day and every day service periods, respectively, for its part of the through haul exceeded substantially the revenues accruing therefrom. In the statement for June the net loss for the actual shipments made was shown as \$1,167.78. The Central Vermont insists that if unlimited daily baggage-car service to Hartford were furnished, it would be required to supply at least three baggage cars to carry the shipments from White River Junction; that the combined expense of operating the open iced cars in connection with these baggage cars would not be materially less than that for the through open-iced car service; and that this service likewise could be provided only at a substantial loss.

Upon consideration of the record we find that the assessment of charges in excess of those which would have accrued on the basis of the actual amount of the commodities shipped has been without tariff authority and therefore illegal; that these illegal charges must be refunded; that the rules, regulations, and practices assailed were, and for the future will be, unreasonable and unduly prejudicial; in that they fail to provide that, on days on which no open-iced car service is provided, milk and cream may be shipped in baggage cars at the rates published for such transportation.

An appropriate order will be entered.

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No. 11070.

E. I. DUPONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, WEST JERSEY & SEASHORE RAILROAD COMPANY, ET AL.

Submitted October 25, 1919. Decided January 13, 1921.

Rates on sulphuric acid, in tank cars, from Paulsboro, N. J., to Rockford, Del., found not unreasonable. Complaint dismissed.

*Harvey S. Farrow, J. P. Laffey, and V. S. Thomas for complainant.
Henry Wolf Bickel and Adams Dodson for defendants.*

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was argued orally before us.

This complaint alleges that the rates applicable and collected on shipments of sulphuric acid in tank cars from Paulsboro, N. J., to Rockford, Del., moving between December 13, 1917, and February 24, 1919, were unreasonable in violation of section 1 of the act to regulate commerce and section 10 of the federal control act. We are asked to award reparation and to establish rates for the future. Rates herein are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Paulsboro is on the line of the Pennsylvania, a few miles southwest of Camden, N. J., and Rockford is within the city limits of Wilmington, Del. In order to effect delivery of acid in tank cars at the plant of the consignee it is necessary to employ the tracks of the Philadelphia & Reading. The shipments were routed "Pennsylvania Railroad care of Philadelphia and Reading." Consistent with the routing instructions, they moved by a customary route over the Pennsylvania to Belmont, Pa., thence over the Philadelphia & Reading to destination, a distance of 162 miles. The rates assessed

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and applicable were the combinations on Belmont and were for the different periods involved, as follows:

	Prior to Apr. 11, 1918.	Prior to Apr. 30, 1918.	Until June 25, 1918.	After June 25, 1918.
Paulsboro to Belmont.....	6.3	.....	7	9
Belmont to Rockford.....	.....	5.3	6	7.5

The combination rate of 13 cents in effect immediately prior to June 25, 1918, for the 162-mile haul yielded ton-mile earnings of 16 mills and, for a 53-ton load, car-mile earnings of 85 cents. Prior to June 25, 1918, a rate of 8.5 cents was in effect from Paulsboro to Wilmington, Del., including Rockford, for delivery over the tracks of the Pennsylvania and this became 10.5 cents after that date.

The complainant contends that the defendants should have published joint through rates from Paulsboro to Rockford for Philadelphia & Reading delivery, which should not have exceeded those to Wilmington and Rockford for Pennsylvania delivery. Had the shipment moved to Wilmington via the Pennsylvania and thence over the Reading to the plant of the consignee, the distance traversed would have been about 73.5 miles. The Pennsylvania connects with the Reading at Chadds Ford, Pa., and by this junction the distance is less than by way of Belmont. It is conceded, however, that the lowest available rate was that in force via the route of movement.

The defendants contend that the rate for Pennsylvania delivery is too low and that it should be at least 12 cents; that, for hauls of the length here involved, it is customary that the rate for a two-line haul be greater than that for one-line haul of equal distance; and that 8 cents represents a fair arbitrary.

An exhibit of complainant shows rates on acid in carloads where the haul is comparable with that here involved. The ton-mile earnings under these rates vary from 10 mills in case of the rate from Marcus Hook, Pa., to Rockford, to 28 mills in case of the rate from Marcus Hook to Carney's Point, N. J. The car-mile earnings vary from 56 cents to \$1.52.

An exhibit of defendants shows comparative rates in effect prior to June 25, 1918, on acid for two-line hauls ranging from 7 cents for 20 miles to 16 cents for 185 miles. The acid was sold under contract for \$23 per ton delivered, so that a 53-ton tank-car load was worth, delivered, \$1,219.

Upon this record it can not be said that the rates charged were excessive for the transportation service rendered. The originating carrier forwarded the shipments via the cheapest route possible under complainant's routing instructions. Although reasonable rates for

the future are asked, the complaint does not include a request for the establishment of a through route different from that via which the shipments moved.

We find that the rates charged were not unreasonable. An order will be entered dismissing the complaint.

No. 11762.

MICHIGAN PASSENGER FARES.

IN THE MATTER OF INTRASTATE FARES OF THE MICHIGAN CENTRAL RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF MICHIGAN.

Submitted December 15, 1920. Decided January 28, 1921.

1. Certain fares and charges required by state authority to be maintained by the respondent steam railroads within the state of Michigan found to be lower than the corresponding interstate fares and charges authorized in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce.
2. Fares and charges prescribed which will remove such preference, prejudice, and discrimination.

John C. Bills, John J. Danhoff, jr., E. M. Davis, and W. K. Williams for steam carriers.

W. M. Smith, Alex. J. Grosbeck, Sheridan F. Master, and Clare Retan for state of Michigan.

John E. Benton for National Association of Railway and Utilities Commissioners.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

The question in this case is whether the intrastate passenger fares of Michigan steam railroads are unlawful in their relation to the interstate fares of the same carriers.

In *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, we divided the steam carriers subject to our jurisdiction into groups and authorized substantial increases in the interstate rates, fares, and charges throughout the country, concluding that such increases would, under the existing conditions, result in rates, fares, and charges—

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not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

It is not necessary for the purposes of this report to state the increases permitted in charges for freight services. The increases permitted in passenger fares were 20 per cent, and on passengers in sleeping and parlor cars a surcharge amounting to 50 per cent of the charge for space in such cars was authorized to be collected in connection with the charge for space, and to accrue to the rail carriers. Upon application, the Public Utilities Commission of Michigan authorized increases in all transportation charges corresponding to those we had authorized, except passenger fares and surcharges, over which it had no jurisdiction.

At the time of our decision in Ex Parte 74, the so-called standard passenger fares of carriers throughout the country, both interstate and intrastate, were on a minimum basis of 3 cents per mile, established by the Director General of Railroads June 10, 1918, under general order No. 28. With the 20 per cent increase allowed by us, the interstate basis became 3.6 cents. A recent statute of the Michigan legislature even provided for lower intrastate fares, and the steam railroads operating in Michigan filed with us a petition, alleging that the maintenance of a lower basis intrastate in Michigan than applied interstate would result in unlawful discrimination; and we thereupon instituted this proceeding of investigation.

The constitution of the state of Michigan gives the legislature power to fix reasonable maximum intrastate passenger fares. Under this grant, the state legislature in 1919 had named 2.5 cents per mile as the general maximum basis, but as most, if not all, of the Michigan carriers were then under federal control, it was provided that the statute should not be operative as to such carriers until federal control ceased. Federal control ceased February 29, 1920, but the transportation act, 1920, provided that all rates, fares, and charges in effect at the end of federal control should continue in effect "until thereafter changed by State or Federal authority, respectively, or pursuant to authority of law," and further provided that without the approval of this Commission no changes could be made in any rate, fare, or charge until September 1, 1920. In July, 1920, the Michigan commission called the carriers' attention to the enactment of the legislature, and indicated that it expected the statutory basis of 2.5 cents to be made effective September 1. The carriers, how-

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ever, took the matter to the United States district court for the eastern district of Michigan, and obtained a temporary order which restrained the Michigan authorities from enforcing the statutory basis. The court held that the transportation act, 1920, required that action by state authorities looking to a reduction be taken subsequent to the enactment of Congress.

The interstate fares, in general, are now on the basis of 3.6 cents per mile, but the general intrastate basis in Michigan remains 3 cents. The authorized surcharge on passengers in sleeping and parlor cars was established interstate, but the Michigan statute was understood by the carriers to prevent the establishment of a corresponding surcharge intrastate. The evidence as to the effect of the differences in fares and charges is similar to that offered and considered in several recent and related cases. *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, *Intrastate Rates within Illinois*, 59 I. C. C., 350, *Wisconsin Passenger Fares*, 59 I. C. C., 391, and *Ohio Rates, Fares, and Charges*, 60 I. C. C., 78, and others. Much of what was said there is applicable to the instant case and need not be repeated here.

Beyond the borders of the state of Michigan are Toledo, Ohio, Fort Wayne and South Bend, Ind., Chicago, Ill., Milwaukee and Green Bay, Wis., Minneapolis, St. Paul, and Duluth, Minn., and other important cities. There is constant competition in the markets of Michigan among manufacturers, wholesalers, and jobbers in the cities named with those located at points in the state, which competition involves passenger travel interstate and intrastate, respectively, to and from the various places of business. A person may travel from Chicago to Kalamazoo, Mich., in competition with another from Detroit to Kalamazoo. At present, the one from Chicago pays an 84-cent greater passenger fare than the one from Detroit, although Kalamazoo is equidistant from Chicago and Detroit, and the transportation is performed under similar circumstances and conditions and by the same railroad. If he travels in a parlor car, the Chicago man pays a total charge of \$1.09, and if he travels in a sleeping car he pays a total charge of \$1.84, more than the one from Detroit for the corresponding services and accommodations. These figures do not include the 8 per cent war tax, which, of course, increases the differences in favor of the intrastate traveler. Should the statutory basis of 2.5 cents be made effective, the difference as against the interstate traveler will be much more pronounced. The above instance is given merely as an example. Many others are referred to in the record. The situation is general, and operates to the detriment of the interstate traffic and of shippers and localities outside the state.

Some routes between points in Michigan are intrastate and some are interstate. The effect of intrastate fares substantially lower than the interstate fares is to draw traffic away from the interstate routes, thus jeopardizing the fares and traffic of such routes, to the advantage of the intrastate routes.

The record establishes that the interstate fares are being defeated, and interstate commerce interfered with or curtailed, by passengers purchasing tickets to points near the state borders, there buying new tickets and immediately resuming their journey on the same train. This practice and its discriminatory effects have been considered in the several cases above referred to.

State and interstate passengers ride on all, or practically all, trains, often side by side in the same seat. The service and accommodations afforded both are the same, and there is no substantial difference in the circumstances and conditions under which the transportation is performed.

It is estimated by the carriers that on a year's business the present basis of charge in Michigan would mean considerably over \$2,500,000 less than if the 3.6-cent basis were made effective. If the 2.5-cent basis were applied, the loss, as it is called, would be about doubled. These amounts indicate the extent to which intrastate traffic fails to contribute in fair proportion to the revenues of the carriers.

No evidence was offered with respect to excursion, convention, and other fares for special occasions, commutation, and other multiple forms of tickets, extra fares on limited trains, or club-car charges. Our findings and order will relate, therefore, only to the standard local and interline fares.

Subject to the above reservation, we are of the opinion and find that the increases made by the respondent steam railroads in interstate passenger fares under our decision in *Ex Parte 74*, and now in effect, result in reasonable fares for interstate transportation within the group considered in this proceeding, and that the failure of respondent steam railroads within the state of Michigan to increase intrastate fares correspondingly has resulted and will result, in intrastate fares lower than the corresponding interstate fares; in undue prejudice to persons traveling in interstate commerce within the state and between points in the state and points in other states; in undue preference of and advantage to persons traveling intrastate in Michigan; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination should be removed by making increases in intrastate passenger fares which shall correspond to the increases heretofore made as aforesaid by respondents in interstate passenger fares.

We further find that the surcharges made by said respondent steam railroads under *Ex Parte 74* upon passengers in sleeping and

parlor cars result in reasonable charges upon passengers so traveling in interstate commerce in the group considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Michigan has resulted, and will result, in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons traveling in interstate commerce within the state, and between points in the state and points in other states; in undue preference of and advantage to persons traveling intrastate in Michigan; and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore established as aforesaid upon passengers so traveling in interstate commerce.

We further find that, whether the aforesaid passenger fares or surcharges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

The above findings are abundantly supported by the evidence of record. They are without prejudice to the right of the state of Michigan or any other interested party to apply in the proper manner for modifications of our finding and order with respect to any fare or charge on the ground that such fare or charge is not related to the interstate fares or charges in such a manner as to contravene the provisions of the interstate commerce act.

Tariffs in accordance with these findings may be made effective upon not less than five days' notice.

An order in accordance with the foregoing conclusions will be entered.

EASTMAN, *Commissioner*, dissents.

60 L. C. C.

No. 11190.

PERRY COUNTY COAL CORPORATION ET AL.

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted October 7, 1920. Decided January 13, 1921.

Rates on coal, in carloads, from certain mines in the Belleville district of southwestern Illinois to points in Missouri on the Mississippi River & Bonne Terre Railway found to be unreasonable and unduly prejudicial. Reasonable joint rates prescribed for the future.

R. W. & W. C. Ropiequet for complainants.

Nuel D. Belnap and Borders, Walter, Burchmore & Collin for interveners.

M. W. Schaefer for East St. Louis & Suburban Railway and St. Louis & Belleville Electric Railway Company.

Henry Thurtell for Mobile & Ohio Railroad Company.

A. P. Humburg and E. A. Smith for Illinois Central Railroad Company.

C. C. P. Rausch for Missouri Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.
McCHORD, Commissioner:

This case was submitted without argument upon the filing of exceptions by the defendants to the proposed report issued herein.

Complainants are engaged in mining coal near Coulterville, Sparta, O'Fallon, and Belleville, Ill. By complaint filed January 24, 1920, it is alleged that the rates on coal in carloads from complainants' mines located in the Belleville group of southern Illinois to points in Missouri on the Mississippi River & Bonne Terre Railway are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe for the future joint through rates from complainants' mines not in excess of the joint rates contemporaneously maintained on like traffic from the mines of its competitors located in the Belleville group and served by the Louisville & Nashville Railroad and the Southern Railway. The complaint included a claim for reparation which was withdrawn at the hearing.

CO L. C. C.

It is virtually admitted on behalf of the Illinois Central Railroad Company and the Mobile & Ohio Railroad Company that complainants are entitled to joint rates from Coulterville and Sparta, respectively, via East St. Louis, Ill., lower than the combinations in effect at the time of the hearing. The question remaining for determination is the measure of the joint rates which should be prescribed for the future.

The Belleville group is shown upon the diagram at page 663 of *The Illinois Coal Cases*, 32 I. C. C., 659, extending east and south of East St. Louis, and is a part of inner group 2. The complainant's mines are located at O'Fallon, on the East St. Louis & Suburban Railway; Belleville, on the St. Louis & Belleville Electric Railway; Coulterville, on the Illinois Central Railroad; and Sparta, on the Mobile & Ohio Railroad. O'Fallon and Belleville are within 12 miles of East St. Louis. The distances to East St. Louis from Coulterville and Sparta are 46.7 and 54 miles, respectively. The average distance from all mines in the inner group to East St. Louis is about 22 miles.

Coal from complainants' mines moves over the initial lines to East St. Louis, the Terminal Railroad Association across the Mississippi River to St. Louis, Missouri Pacific Railroad to Riverside, Mo., and the Mississippi River & Bonne Terre Railway to points in Missouri. The distance from St. Louis to Riverside is 29.7 miles and from Riverside to Doe Run, Mo., near the end of the delivering line, 46.2 miles. Herculanum and Bonne Terre, Mo., representative destinations, are respectively 1.9 and 31.1 miles south of Riverside. The mean average distance from St. Louis to points on the Mississippi River & Bonne Terre is about 53 miles and the combined average for the hauls east and west of the river is about 78 miles.

Throughout this report the rates stated will be in amounts per ton of 2,000 pounds. Prior to the increases permitted in *Increased Rates*, 1920, 58 I. C. C., 220, the rates, effective since December 3, 1918, from complainants' mines were \$1.40 to Herculanum and since December 22, 1919, \$1.50 to Bonne Terre, based upon the combination of proportional commodity rates to and beyond East St. Louis, except that on January 23, 1920, the Mobile & Ohio canceled its proportional rate from Sparta to East St. Louis. The rates to points on the Mississippi River & Bonne Terre Railway south of Riverside to Crystal City, inclusive, were the same as to Herculanum, and the rates to points south of Crystal City, or Festus, were the same as to Bonne Terre.

On June 30, 1917, combinations from complainants' mines to the Herculanum group were 80.5 cents and to the Bonne Terre group \$1.
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On July 1, 1917, the proportional rates of 25 cents from the Belleville group to East St. Louis were increased 15 cents per ton under permission granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303. Effective August 10, 1917, the other components of the through rates, namely, the proportional rates from East St. Louis, were increased 15 cents per ton. The double advances in these identical rates were condemned in *Mississippi River & Bonne Terre Ry. v. Director General*, 55 I. C. C., 674. We issued no order fixing future rates in that proceeding in view of the defendants' stated intention of publishing joint rates from the mines in the inner group to destinations on the Mississippi River & Bonne Terre Railway via East St. Louis on the basis of one increase of 15 cents plus the amounts authorized in general order No. 28 of the Director General. Upon this basis these rates would have been \$1.155 to the Herculeanum group and \$1.45 to the Bonne Terre group which were the joint rates in effect, subsequent to June 25, 1918, from the mines in the Belleville group located on the Southern Railway. However, these joint rates have not been published.

A number of changes in these rates have occurred since June 30, 1917, and effective June 25, 1918, the rates from the Belleville group via East St. Louis to the Herculeanum group were increased to \$1.525 and to the Bonne Terre group \$1.725.

The joint rates made effective by general order No. 28 from mines in the Belleville group served by the Louisville & Nashville Railroad to the Herculeanum group were \$1.35, on coal not including slack. The joint rates to Bonne Terre and other points south of the Herculeanum group were \$1.45 from mines served by the Louisville & Nashville Railroad, which rates were the same as those from the mines served by the Southern as seen above. The rates of \$1.45 from mines on the Southern applied on lump, egg, nut, and mine-run coal.

The Illinois Central Railroad Company and the Mobile & Ohio Railroad Company formerly maintained through routes and joint rates from the mines in the Belleville group, which they served to points on the Mississippi River & Bonne Terre Railway in connection only with the Illinois Southern Railway. That line extended in a southwesterly direction through Centralia, Ill., to its connection with the Mississippi River & Bonne Terre Railway at Derby, Mo.; and it connected with the Southern Railway at Centralia, the Louisville & Nashville Railroad at Nashville, the Illinois Central at Coulterville, and the Mobile & Ohio at Sparta. Centralia is 65.1 miles east of St. Louis, and Sparta is southeast of St. Louis. The Southern Railway and the Louisville & Nashville Railroad also formerly maintained through routes and joint rates to points on the Mississippi River & Bonne Terre Railway either by way of East St. Louis or in

65 I. C. C.

connection with the Illinois Southern Railway through Centralia and Nashville, respectively.

The line of the Illinois Southern Railway has been abandoned, and complainants are now compelled to ship their coal over the East St. Louis route at combination rates higher than the joint through rates maintained from mines served by the Southern Railway and the Louisville & Nashville Railroad in the Belleville or inner group. The complainants have been deprived of the Belleville-group rates, which they had enjoyed for a number of years and which their competitors located on the Southern Railway and the Louisville & Nashville Railroad continue to enjoy. The complainants must either absorb the difference in freight rates out of their profits or relinquish their trade to their competitors in this field where the consumption of coal is heavy.

The Illinois Central contends that it should not be compelled to maintain rates from the Belleville group via East St. Louis upon the same basis as the rates formerly in effect via the Illinois Southern Railway route. The latter route intersected the Illinois coal field near the boundary of the inner and outer groups and joined the 46.2-mile line of the Mississippi River & Bonne Terre Railway midway between Bonne Terre and Doe Run. The average distances from mines on the Illinois Central in the Belleville group to East St. Louis is 35.9 miles and to Coulterville 16.2 miles. The average distances from all the Illinois Central mines in southern Illinois to Mississippi River & Bonne Terre Railway stations were less over the Illinois Southern Railway route, but the distances from the mines on the Illinois Central Railroad in the Belleville group to Herculaneum and upper points on the Mississippi River & Bonne Terre Railway were shorter by way of East St. Louis. The distances from the mines in the Belleville group served by the Southern Railway and Louisville & Nashville Railroad to all points on the Mississippi River & Bonne Terre Railway are shorter through East St. Louis than they were over the abandoned line of the Illinois Southern Railway. On behalf of the Illinois Central Railroad it is stated that the rates from mines on the Southern Railway are too low to be applied from mines served by the Illinois Central Railroad; and that the Belleville group extends along the Illinois Central Railroad as far as Pinckneyville, 61 miles from East St. Louis, whereas there are some mines in the inner group served by the Southern Railway and the Louisville & Nashville Railroad that are within about 12 miles of East St. Louis.

For the Illinois Central Railroad it is suggested that the rate from the Belleville group to the Herculaneum group be made \$1.30 instead of \$1.155, which is the present joint rate from mines served

by the Southern Railway, and \$1.50 to the points south of the Herculaneum group. It calls attention to the fact that the suggested rates must be divided between three carriers in addition to the portion of the rate accorded for the river transfer. It is stated that all of the carriers could operate successfully under the rates suggested.

On behalf of the Mobile & Ohio Railroad Company it is contended that on account of the short length of the aggregate hauls from the Belleville group the rates should not be blanketed to all points on the Mississippi River & Bonne Terre Railway. Attention is called to the fact that there has never been an established grouping of rates from mines served by all of the lines in the inner group to all points on the Mississippi River & Bonne Terre Railway. On behalf of the Mobile & Ohio it is suggested that the rates be fixed as follows: To stations Howe to Tunnel, inclusive, \$1.50; and to stations south of Tunnel \$1.60. In support of their suggestions it is further stated that the carriers could establish those rates without disturbing the existing relationships between the Belleville and other groups in southern Illinois. The rates proposed are fairly in line with and no higher than the rates charged by the Missouri Pacific for hauls over its single line for similar distances between points in Missouri. It is also suggested by defendants that the rates from mines on the Southern Railway in the Belleville or inner group to Herculaneum be advanced from \$1.155 to \$1.30.

Defendants contend that the through rates formerly established in connection with the Illinois Southern Railway, which had its direct line across the river, do not afford a fair measure of the rates which should be established by their lines over the East St. Louis route. The rates suggested to be applied via East St. Louis were considered by them to be reasonable in spite of the fact that they exceeded the rates obtained by applying the single increase to the sum of the factors of the combination rates in effect from other mines in the Belleville group prior to July 1, 1917, which was the basis approved in *Mississippi River & Bonne Terre Railway v. Director General*, *supra*. The rates suggested by the Mobile & Ohio to stations south of Tunnel, Mo., included the same double increases which were condemned in that case.

We find that the rates assailed are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously maintained on like traffic from mines in the Belleville district served by the Southern Railway to the respective destinations in Missouri on the lines of the Mississippi River & Bonne Terre Railway.

An appropriate order will be entered.

No. 10848.

OKLAHOMA PRODUCING & REFINING CORPORATION
OF AMERICA

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN
ILLINOIS RAILROAD COMPANY, ET AL.

Submitted August 8, 1920. Decided December 29, 1920.

Rates on petroleum and its products, in tank-car loads, from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill., to Muskogee, Okla., found not unreasonable but unduly prejudicial to the extent of their excess over rates contemporaneously maintained to Tulsa, Wagoner, and certain other Oklahoma points. Reparation denied.

R. W. Kellough and *R. Y. Stevenson* for complainant.

R. C. Trevillion for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in producing, refining, selling, and shipping crude petroleum and the products thereof, having its principal offices at Tulsa and a refinery at Muskogee, both in the state of Oklahoma. By complaint filed August 2, 1919, as amended, it alleges that defendants' rates on petroleum and its products, in tank-car loads, from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill., to Muskogee were and are unreasonable to the extent that they exceeded and exceed the rates contemporaneously maintained from the same points to Wagoner and Tulsa, Okla., and unduly prejudicial in comparison with the rates to Tulsa, West Tulsa, Sand Springs, Bartlesville, Wagoner, and Fort Gibson, all in the northeastern section of Oklahoma, in violation of sections 1 and 3 of the act to regulate commerce. Reparation on shipments of lubricating oil which moved within the statutory period and the establishment of reasonable and nonprejudicial rates for the future are asked. Carload rates only are considered. They are stated in cents per 100 pounds, and do not include the increases authorized in *Increasing Rates, 1920*, 58 I. C. C., 220.

The rates on petroleum and its products from Warren and St. Mary's to Oklahoma points are combinations of the proportional 60 I. C. C.

joint rates to and beyond east-bank Mississippi River crossings. As to these rates the complaint is directed to the factors applicable beyond East St. Louis, Ill. For approximately 14 years prior to December 20, 1919, the rates to Oklahoma points from Chicago territory, which includes Chicago Heights, were joint rates based on a differential of 5 cents over the rates from St. Louis, Mo. On that date the rate from Chicago territory to Tulsa was changed to a joint rate based on the combination of rates to and from Joplin, Mo.

The following tables are illustrative of the rates in effect prior to and since June 25, 1918, and the revenues, in mills per ton-mile, which those rates would yield, from Chicago Heights and East St. Louis to Muskogee as compared with Tulsa and Wagoner, which are the principal points alleged to be preferred and will be used throughout this report as typical of the competitive points above named:

From Chicago Heights to—	Distance. ¹	Prior to June 25, 1918.		Between Oct. 3, 1918, and July 8, 1919. (See note.)		Dec. 20, 1919.		Feb. 20, 1920.	
		Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
	Miles.	Cents.							
Muskogee.....	668	48	13.75	52.5	15.04	52.5	15.04	52.5	15.04
Tulsa.....	706	35	9.91	29.5	11.19	51	14.45	51	14.40
Wagoner.....	682	35	10.26	39.5	11.58	52.5	15.40	52.5	15.40

From East St. Louis, on shipments originating east of Indiana-Illinois state line, to—	Distance. ¹	Prior to June 25, 1918.		Between Oct. 3, 1918, and July 8, 1919. (See note.)		Dec. 20, 1919.		Feb. 20, 1920.	
		Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.	Rate.	Revenue.
	Miles.	Cents.							
Muskogee.....	433	43	19.86	45.5	21.02	45.5	21.02	45.5	21.02
Tulsa.....	424	30	14.15	32.5	15.23	32.5	15.23	32.5	15.23
Wagoner.....	416	30	14.42	32.5	15.62	32.5	15.62	32.5	15.62

¹ Distances are from Chicago. Rates apply from Chicago Heights.

² Distances are from St. Louis. Rates apply from East St. Louis.

NOTE.—Effective on various dates between Oct. 3, 1918, and July 8, 1919, pursuant to freight rate authority No. 66, issued July 15, 1918, which authorized the modification of general order No. 28 of the Director General of Railroads, rates on petroleum and its products were adjusted to basis of 4.5 cents over the rates in effect May 25, 1918.

Prior to June 25, 1918, the rate to East St. Louis on shipments from Warren and St. Mary's destined to Oklahoma points was 24.5 cents, on which date it was increased to 26.5 cents.

No evidence was submitted to show that complainant suffered damage by reason of any undue prejudice. Its prayer for reparation is based solely on the alleged unreasonableness of the rates to Muskogee.

601. C. C.

Defendants contend that for many years rates on petroleum and its products from Chicago territory and from Mississippi River crossings to Tulsa, Wagoner, and other points in northeastern Oklahoma have been too low, and that the rates to Muskogee were not and are not unreasonable. They stated that their purpose was to remove any prejudice against Muskogee existing at the time of the hearing, December 20, 1919, by increasing the rates to the competitive points. By the increases effective February 29, 1920, shown in the foregoing tables, it appears that they endeavored to accomplish that result.

We find that the rates on petroleum and its products, in tank-car loads, from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill., to Muskogee, Okla., were not and are not unreasonable, but that they were, are, and for the future will be unduly prejudicial to the extent that they exceeded or may exceed the rates contemporaneously maintained on like traffic from the same points to Tulsa, West Tulsa, Sand Springs, Bartlesville, Fort Gibson, and Wagoner, Okla. Complainant has failed to show damage by reason of the undue prejudice found to have existed, and reparation is denied.

An appropriate order will be entered.

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No. 10902.

E. H. EDWARDS

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted May 8, 1920. Decided December 29, 1920.

Rate on wire rods of No. 8 gauge or heavier from points in transcontinental group B to South San Francisco, Calif., found not unreasonable, but unduly prejudicial to the extent that it exceeds 90 per cent of the rate contemporaneously maintained by defendants on manufactured galvanized wire, wire netting, and wire rope from and to the same points. Reparation denied.

Sanborn & Roehl for complainant.

E. W. Camp and *G. H. Baker* for Atchison, Topeka & Santa Fe Railway Company and Director General of Railroads.

Frank B. Austin and *H. W. Klein* for Southern Pacific Company and Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by all parties except the Director General of Railroads to the report proposed by the examiner.

Complainant, an individual operating under the trade name of E. H. Edwards Company and engaged in the business of manufacturing and selling wire, wire rope, and wire netting at South San Francisco, on the coast line of the Southern Pacific Company 9 miles south of San Francisco, Calif., alleges that the rate of \$1.25 per 100 pounds on wire rods over three-sixteenths of an inch in diameter, in carloads of 80,000 pounds or more, from Harriet, N. Y., Woodlawn, Pa., and other points in transcontinental group B, as described in agent Countiss's tariff I. C. C. No. 1067, to South San Francisco, was and is unreasonable, unjustly discriminatory, and unduly prejudicial. Complainant seeks reparation on certain shipments that moved after October 25, 1918, and the establishment for the future of a rate of \$1, that rate, by amendment to the complaint made at the hearing, to be applicable also on wire rods of No. 8

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gauge and heavier. No. 8 gauge rods are 0.162 inches in diameter. Rates will be stated in amounts per 100 pounds.

Complainant receives wire rods from eastern mills in coils about 4 feet in diameter, weighing 250 to 300 pounds each. At his plant they are put through an acid bath to remove the dirt and scale, are lime coated, baked, and reduced in diameter by being drawn through dies, and are subsequently used in the manufacture of wire, wire rope, and wire netting. He is the only manufacturer of wire in the San Francisco district. One or more competitors manufacture wire netting and rope, but use therefor galvanized wire purchased in the east. The rates at the time of the hearing on wire rods over three-sixteenths of an inch in diameter and on manufactured wire articles to South San Francisco and other Pacific coast points from the transcontinental groups described in agent Countiss's tariff I. C. C. No. 1067 are, in cents, as follows:

	Groups.							
	A.	B.	C.	D.	E.	F.	G.	H.
Wire rods.....	Cents. 137.5	Cents. 125	Cents. 119	Cents. 112.5	Cents. 108.5	Cents. 94	Cents. 94	Cents. 94
Manufactured wire articles.....	137.5	125	119	112.5	112.5	108.5	108.5	108.5

Group B includes Harriet and Woodlawn, the former being within the switching limits of Buffalo, N. Y., and the latter about 20 miles north of Pittsburgh, Pa. Thus, from groups A, B, C, and D the rates on wire rods were the same as on wire, wire netting, and wire rope; from groups F, G, and H rates on the rods were about 88 per cent of the rates on the manufactured articles; and from group E about 94 per cent. The carload minimum weight on the rods is 80,000 pounds and on the manufactured articles 50,000 pounds. The record discloses no movement from group E, or west thereof, to the Pacific coast.

Complainant shows that the rates on wire rods from Pittsburgh, Woodlawn, Chicago, Cleveland, etc., to eight selected eastern destinations are from 41.3 per cent to 75.4 per cent of the rates on wire. The value of the rods is about one-half that of galvanized wire, one-third that of wire netting, and one-fourth or one-fifth that of wire rope. The rods are a raw material, not subject to damage in transit, and can be and are shipped in open cars. The loading is heavy. The average weight of 22 shipments received by complainant was in excess of 100,000 pounds. Four weighed less than 80,000 pounds and one weighed 120,000 pounds. When loaded at the minimum weight the rate of \$1; minimum 80,000 pounds, asked for on wire rods, yields

60 I. C. C.

greater car-mile revenue than the rate of \$1.25, minimum 50,000 pounds, on manufactured wire articles, as shown by the following table:

To South San Francisco from—	Distance.	Rate.	Minimum weight.	Car-mile earnings.
	<i>Miles.</i>		<i>Pounds.</i>	<i>Cents.</i>
Harriet, N. Y.	3,061	\$1.25 1	50,000 30,000	20.4 26.1
Woodlawn, Pa.	2,990	1.25 1	50,000 30,000	20.9 26.7

The record does not disclose the average loading of manufactured wire articles.

In view of these facts complainant contends not only that the rates on wire rods are unreasonable, but that the maintenance of the present relationship between the rates on rods and articles manufactured therefrom results in unjust discrimination and subjects rods to an undue prejudice and disadvantage. He asserts that under this rate relationship eastern manufacturers are able to ship wire articles to Pacific coast points at the same rate that he pays on his raw material, and that to compete with these manufacturers he must shrink his profits to the extent of the outbound freight rate from South San Francisco.

In justification defendants set forth in some detail the history of the rate adjustment on iron and steel articles to the Pacific coast. They explain that the all-rail rates from eastern points of production to Pacific coast points for many years have been depressed by water competition, and that this is perhaps true of the rates on iron and steel articles to a greater extent than of the rates on any other commodities. When water competition existed the water carriers, generally speaking, made no distinction in their rates on the various classes of iron and steel articles, and in order to participate in the handling of this traffic the transcontinental rail lines also were obliged to disregard the question of differentials between articles, and to make the same rates regardless of value. The record indicates that this was true of wire rods and manufactured wire articles. As we from time to time gave the transcontinental rail lines relief from the provisions of the fourth section because of water competition, the rail rates fluctuated and rates were established on certain commodities, including iron and steel articles, that were lower to the Pacific coast terminals than to intermediate points. Prior to our decision in *Transcontinental Rates*, 46 I. C. C., 236, the rate on wire rods to South San Francisco from group-B points was 75 cents; the highest rate to an intermediate point was \$1. Following that decision,

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wherein relief from the long-and-short-haul clause of the fourth section was denied, the rate to Pacific coast terminals was on March 15, 1918, increased to \$1. On June 25, 1918, this rate was increased 25 per cent under general order No. 28 of the Director General of Railroads. The propriety of that order is not in issue.

The record clearly discloses that the interest of complainant lies chiefly in the relationship of the rates on wire rods, wire rope, and wire netting. Generally speaking, and under ordinary conditions, it may be said that the rates on raw materials should be somewhat lower than rates on products manufactured therefrom. Defendants concede the soundness of this view, but contend that the rates for the movement of wire rods from eastern mills to the Pacific coast are not normal, since the rail carriers have never been able completely to eliminate from the transcontinental rate structure the effect of water competition on the movement of iron and steel articles. They cite facts tending to prove in their judgment that the resumption of active water competition may soon be expected, if, indeed, a certain amount of such competition does not already exist. The evidence does not warrant a finding that water competition is at present, or will be in the immediate future, so potent as to require the maintenance by defendants of the same rates on wire rods as on wire rope and wire netting in order to obtain a share of the traffic. None of the facts here cited by defendants would seem to warrant charging at this time from eastern points as high a rate on wire rods as is contemporaneously applied on wire rope and wire screen. Such a rate adjustment undoubtedly subjects wire rods to an undue prejudice and is unduly preferential of wire rope and wire screen.

We find that the rate assailed was and is not unreasonable, but that the maintenance of rates by defendants on wire rods, No. 8 gauge and heavier, from transcontinental group B, as described in agent Countiss's tariff I. C. C. No. 1067, to South San Francisco, Calif., in excess of 90 per cent of the rates contemporaneously maintained by defendants from and to the same points on manufactured galvanized wire, wire netting, and wire rope, was, is, and for the future will be unduly prejudicial to complainant.

The record does not sustain complainant's contention that he has been damaged by reason of unjust discrimination or undue prejudice.

The allegations of the complaint are confined to rates from points in group B, but reasonable and nondiscriminatory rates for the future are asked also from groups A, C, and D. The testimony deals entirely with shipments from group B and there is no evidence to warrant a finding as to the other groups.

An appropriate order will be entered.

60 I. C. C.

HALL, Commissioner, dissenting:

Maintenance of the same rate on a partly finished material as on articles manufactured therefrom is not sufficient as the sole basis for a finding of undue prejudice. We have not found it unduly prejudicial to maintain the same rates on wheat as on flour.

Nor can I assent to the use of paper rates as a basis for computing a differential. This record discloses no movement from group E or west thereof to the Pacific coast. The complaint should be dismissed.

60 I. C. C.

No. 11090.

PRAIRIE PIPE LINE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS
& TEXAS RAILWAY COMPANY, ET AL.

FOURTH SECTION APPLICATION NO. 631.

Submitted October 21, 1920. Decided December 29, 1920.

Rates collected on secondhand wrought-iron pipe, in carloads, from Cleveland and Kiefer, Okla., to Tiffin, Tex., found in excess of the rates applicable. Refund directed and complaint dismissed.

E. H. Hogueland for complainant.

James M. Chaney, John F. Finerty, and Alex. M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued before us. Upon consideration of the record we have reached conclusions differing from those proposed by him.

Complainant, a corporation engaged in the construction and operation of pipe lines for the transportation of petroleum, alleges by complaint filed December 16, 1919, that the rates collected on three carloads of secondhand wrought-iron pipe shipped to Tiffin, Tex., two from Cleveland, Okla., in February, 1918, and one from Kiefer, Okla., in May, 1918, were unjust, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce and section 10 of the federal control act, to the extent that they exceeded 35 cents per 100 pounds. The prayer is for reparation and the establishment of reasonable rates for the future. Rates will be stated in amounts per 100 pounds.

The shipments from Cleveland, 81 miles south of Coffeyville, Kans., moved over the Missouri, Kansas & Texas to Fort Worth, Tex., and Texas & Pacific beyond. On one of these shipments, weighing 66,200 pounds, charges were collected in the sum of \$834.12, 60 I. C. C.

based on a rate of \$1.26 for which no tariff authority appears. On the other, weighing 58,600 pounds, charges were collected in the sum of \$328.16, based on the fifth-class rate of 56 cents. The shipment from Kiefer, 122 miles south of Baxter, Kans., moved over the St. Louis-San Francisco to Fort Worth, and Texas & Pacific beyond. It weighed 98,000 pounds, and charges were collected in the sum of \$529.20, based on the fifth-class rate of 54 cents.

A commodity rate of 35 cents was contemporaneously applicable from Coffeyville and Baxter to Tiffin, to which Cleveland and Kiefer are directly intermediate by way of defendants' lines. Under an intermediate application provision in defendants' tariffs this rate was applicable from Cleveland and Kiefer. There is, therefore, a total overcharge on the shipments of \$911.68, which amount should be refunded promptly, with interest.

The allegations of unreasonableness, unjust discrimination, and undue prejudice are based on the contention that the rate from Cleveland and Kiefer should not exceed the rate from Coffeyville, Baxter, and other points in Kansas and Oklahoma taking the same rate. As the rate from all these points was and is the same, no order is necessary.

In view of our findings, Fourth Section Application No. 631, which was assigned for hearing in connection with this case, is not involved.

The complaint will be dismissed.

GO I. C. C.

No. 11282.

L. H. WHEELER AND F. D. TIMLIN

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted October 9, 1920. Decided December 29, 1920.

Rate charged during federal control on lumber, moving intrastate, in carloads, from Long Lake, Wis., to Dorchester, Wis., found to have been unreasonable. Reparation awarded.

A. E. Solie for complainants.

J. N. Davis and *Robert H. Widdicombe* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainants are L. H. Wheeler and F. D. Timlin, copartners engaged in the lumber business at Dorchester, Wis., under the firm name of Wheeler-Timlin Lumber Company. By complaint filed February 28, 1920, they allege that the rate of 18.5 cents charged for the intrastate transportation of six carloads of lumber in November, 1919, from Long Lake, Wis., to Dorchester, was unjust and unreasonable. Rates will be stated in cents per 100 pounds.

Long Lake is a station on a branch line of the Chicago & North Western, hereinafter termed the North Western, 188.27 miles east and north of Marshfield, Wis. Dorchester is on the line of the Minneapolis, St. Paul & Sault Ste. Marie, hereinafter termed the Soo, 25.9 miles north of Marshfield, junction point of the two lines, which were both under federal control when the shipments moved.

The shipments, aggregating 246,100 pounds, moved over the North Western to Marshfield, and thence to destination over the Soo. Charges were collected in the sum of \$455.80 at the applicable combination rate of 18.5 cents, composed of commodity distance rates of 11.5 cents to Marshfield and 7 cents beyond.

Lumber-producing points in Wisconsin generally are grouped and take rates which are similar for single and two line hauls. Complainants compare the rate in issue with a rate of 12.5 cents applicable I. C. C.

cable from group points on the Soo in Wisconsin to stations on the North Western in Wisconsin and Illinois for an average distance of 236.4 miles, and from the Rhinelander group on the North Western to points in Wisconsin on the Soo line for an average distance of 200.4 miles. Long Lake is not in either of these groups, although the Rhinelander group includes near-by points. They also cite a rate to Dorchester of 12 cents from stations on the Soo from Cavour, Wis., to Rapid River, Mich., inclusive, for an average distance approximately the same as that from and to the points here considered; and a rate of 15.5 cents from Couderay, Wis., over an interstate route to Boscobel and other points in Wisconsin, an average distance of 315 miles. Prior to the increase effective June 25, 1918, under general order No. 28 of the Director General of Railroads, the last-mentioned rate was 12.5 cents, which was prescribed in *Bekkedal v. C., St. P., M. & O. Ry. Co.*, 37 I. C. C., 611. In that case we expressed the view that the 12.5-cent rate fixed for distances averaging 315 miles was somewhat higher than the scale of rates prevailing from lumber-producing group points in Wisconsin to points within that state.

Defendants seek by various comparisons of distance class rates and others to justify the reasonableness of the separate factors basing on Marshfield; but it is the reasonableness of the entire rate and not that of its components which is here in issue. Defendants further urge that the movement of this lumber was unusual for the reason that Dorchester, the point of destination, is in one of the principal lumber-producing sections of Wisconsin and has rates not in excess of 10 cents from near-by points. They state that no request has ever been made for the establishment of a joint rate from and to these points, and contend that there was no occasion for the maintenance of rates other than those charged.

Defendants' contention that complainants are not entitled to reparation, on the ground that the transportation charges were included in the selling price of the lumber, is without merit. *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531.

We find that the rate assailed was unreasonable to the extent that it exceeded 12.5 cents per 100 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation in the sum of \$147.67, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11350.

E. J. FOGARTY, WARDEN OF THE INDIANA STATE
PRISON,

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 4, 1920. Decided December 29, 1920.

Import rate on sisal, in carloads, from New Orleans, La., to Michigan City, Ind., found not unreasonable or unduly prejudicial. Complaint dismissed.

Ele Stansbury and *A. B. Cronk* for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant is the warden of the Indiana state prison. He alleges that the import commodity rate of 35.5 cents per 100 pounds on sisal, from New Orleans, La., to Michigan City, Ind., where the state of Indiana maintains a penitentiary at which binder twine is manufactured from sisal by prison labor, is unreasonable and unduly prejudicial when compared with the rate of 32.5 cents applicable from New Orleans to Chicago, Ill. We are asked to prescribe for the future a rate to Michigan City which will not exceed the rate to Chicago. Rates will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Sisal is a vegetable fiber grown in Yucatan. It is shipped in machine-pressed bales, each weighing about 370 pounds. Its value in June, 1920, when this case was heard, was 7.75 cents per pound f. o. b. New Orleans. There is a considerable movement of this commodity to state penitentiaries in Michigan, Minnesota, Wisconsin, and Kansas, as well as to factories employing paid labor located at Chicago, Indianapolis, Ind., points in Ohio, and elsewhere. From October 1, 1919, to the time of the hearing 161 carloads were used in the penitentiary at Michigan City. The twine produced there is sold in Illinois, Missouri, Kansas, Oklahoma, Iowa, Minnesota, Pennsylvania, New York, Ohio, and Indiana in competition with factories

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manufacturing the same commodity. Complainant's chief competitor in the production and sale of binder twine is the International Harvester Company, which operates two plants at Chicago. Complainant's witness testified that the price of twine is fixed by the International Harvester Company and that the prison-made product is generally sold on the basis of 1 cent per pound under the price quoted by that company.

Michigan City is 56 miles east of Chicago on the Michigan Central. The short-line distance from New Orleans is 930 miles via the Illinois Central to Matteson, Ill., thence Michigan Central, and apparently all the traffic moves over this route. The short-line distance from New Orleans to Chicago is 912 miles by the direct route of the Illinois Central. Complainant contends that this difference in distance is insignificant and should not be reflected in the rates.

From an exhibit of record it appears that the 32.5-cent rate to Chicago also applies to other points of delivery in Illinois, Ohio, Indiana, and Kentucky. The average distance from New Orleans to nine representative destinations is 865 miles. From New Orleans the rates to Michigan City have never been less than 3 cents over Chicago.

The record affords no basis for a finding that the maintenance of a higher rate on sisal to Michigan City than to Chicago results in undue prejudice to complainant. It is freely admitted that the Michigan City institution has suffered no loss of business by reason of the advantage enjoyed by its competitor at Chicago, but, on the contrary, has found a ready market for all the twine that it has been able to produce.

Upon this record we find that the rate assailed is not unreasonable or unduly prejudicial. The complaint will be dismissed.

CO L. C. C.

No. 11129.

CAPE GIRARDEAU PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

Submitted October 26, 1920. Decided January 13, 1921.

Rates on crushed gypsum rock from producing points in Oklahoma to Cape Girardeau, Mo., found not unreasonable, but found unduly prejudicial. Reparation denied.

George B. Webster for complainant.

Robert N. Nash and *M. G. Roberts* for defendants.

Alex. M. Bull for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by defendants, to which complainant made answer.

Complainant is a corporation engaged in the manufacture of cement at Cape Girardeau, Mo. By complaint filed December 31, 1919, it alleges that the rates on crushed gypsum rock, used in the manufacture of portland cement, from Okeene and other Oklahoma producing points taking the same rates to Cape Girardeau were and are unjust, unreasonable, and unduly prejudicial to complainant and unduly preferential of its competitors located at Hannibal and St. Louis, Mo. We are asked to establish a rate not to exceed 13.5 cents per 100 pounds, and to award reparation on 56 carloads shipped from Southard and Cement, Okla., to Cape Girardeau since January 1, 1918. Rates will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Although Okeene was used for the purpose of rate comparisons, it appears that none of complainant's shipments originated at that point. Complainant's supply has been obtained from Southard with the exception of a few cars shipped from Cement, both of which take the same rate.

60 I. C. C.

Hannibal is 120 miles north and Cape Girardeau 132 miles south of St. Louis. The distances from Okeene over routes by which the rates applied are, to Hannibal, St. Louis, and Cape Girardeau, 574, 578, and 601 miles, respectively. The movement to Hannibal is a two-line haul, delivery being made by the Missouri, Kansas & Texas Railway, but shipments to the other points named are delivered by the initial carrier. Southard and Cement are on the St. Louis-San Francisco Railway, and the actual movement by that road to Cape Girardeau has been via St. Louis, although it has a shorter route.

Defendants' rates on this commodity from Okeene, Cement, and Southard on June 25, 1918, were: To Hannibal, 13.5 cents; to St. Louis, 11.5 cents; and to Cape Girardeau, 16 cents; minimum weight, 60,000 pounds. Defendants also published a rate from Cement, Southard, and certain other Oklahoma points to Hannibal of 11.5 cents, minimum weight, marked capacity of car, but not less than 50,000 pounds. The 11.5-cent rates were increased to 13 cents on July 29, 1920. Prior to June 25, 1918, the effective date of general order No. 28 of the Director General of Railroads, the gypsum rates from this region were 1 cent less than those above stated. A few of the shipments on which reparation is sought moved before that increase.

The evidence adduced fails to show that the rate to Cape Girardeau is intrinsically unreasonable, and bears more particularly upon the relationship of the rates. Complainant contends that no material dissimilarity in operating conditions exists, and that the slight difference in distance to Cape Girardeau from points of origin does not justify the substantial excess in the rates to that point over those to Hannibal and St. Louis. Lower rates to other destinations in Missouri and Kansas are also cited, but for shorter distances.

For defendants it was testified that the rates from Oklahoma to Hannibal and St. Louis are unduly low, having been initiated at the request of the Oklahoma shippers in order to meet competition from gypsum producers in Kansas. They stated that they were contemplating increasing those rates to 14.5 cents.

Defendants introduced evidence to show that the present rate to Cape Girardeau from the originating territory, computed on a basis of 600 miles and a minimum weight of 60,000 pounds, affords car-mile earnings of but 16 cents and ton-mile earnings of 5.3 mills. Other evidence introduced by defendants tends to show considerably higher car-mile and ton-mile earnings from Kansas and Iowa gypsum-producing territory to the three consuming points here considered than are afforded by the rates assailed to Cape Girardeau. They show that the through rate on crushed gypsum rock from Kansas and Iowa points to Cape Girardeau is 19 cents, although the mileage is considerably less than from the Oklahoma points;

and that the general basis of rates from Oklahoma, Kansas, and Texas territory on cement plaster and portland cement is somewhat higher to Cape Girardeau than to Hannibal or St. Louis. The volume of this gypsum traffic has been comparatively light.

We find that the rates assailed of 15 cents prior to June 25, 1918, and 16 cents since that date, from Acme, Agatite, Altus, Alva, Bickford, Cement, Creta, Darrow, Gladys, Ideal, Muskogee, Okeene, Olustee, Roman Nose, Southard, and Watonga, Okla., to Cape Girardeau, were not and are not unreasonable, but that they have been, are, and for the future will be, unduly prejudicial to complainant and unduly preferential of its competitors at Hannibal and St. Louis to the extent that they exceeded, exceed, or may exceed rates contemporaneously in effect on crushed gypsum rock from the same points of origin to either Hannibal or St. Louis.

No damage caused by the undue prejudice and preference found to exist has been shown, and reparation must be denied.

An appropriate order will be entered.

60 I. C. C.

No. 11178.¹
AMERICAN TRADING COMPANY
v.
DIRECTOR GENERAL, AS AGENT, NEW YORK CENTRAL
RAILROAD COMPANY, ET AL.

Submitted October 27, 1920. Decided January 13, 1921.

Rates charged on less-than-carload shipments of straw braid from San Francisco, Calif., and Tacoma and Seattle, Wash., to Chicago, Ill., New York, N. Y., and Toronto, Ontario, imported from Japan and China, found not to have been unreasonable or unjustly discriminatory. Complaints dismissed.

Theodore Kiendl, jr., C. L. Belsterling, and Stetson, Jennings & Russell for complainants.

John F. Finerty for Director General, as Agent, and defendants under federal control.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by complainants to report proposed by the examiner and the case was argued orally before us.

In these complaints it is alleged that the rates charged by defendants on numerous less-than-carload shipments of straw braid and chip braid forwarded during the period from July 1, to September 16, 1918, from San Francisco, Calif., and Tacoma and Seattle, Wash., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, were unreasonable and unjustly discriminatory. We are asked to award reparation. No. 11178 was filed by the American Trading Company, a corporation engaged in the importing and exporting business and having its principal office in New York. Sub-No. 1 was filed by Paul A. Isler and Charles H. Guye, copartners transacting an import business at New York. Rates will be stated herein in amounts per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments, which moved over defendant carriers' lines, consisted of straw braid and chip braid imported from Japan and China. Straw braid, in less than carloads, is rated first class in the

¹ This report also embraces No. 11178 (Sub-No. 1), *Isler & Guye v. Director General, as Agent, Great Northern Railway Company, et al.*

western classification, which governed; and the legal rates thereon were the first-class rates of \$4.25 to Chicago; \$4.50 to Toronto, and \$4.625 to New York. On shipments of straw braid the applicable charges were generally collected, though apparently two shipments to New York were undercharged and one shipment to Toronto was overcharged. The complaints do not involve any shipments of straw braid to either Iberville or St. Johns.

The first-class rates were also charged on shipments of chip braid which moved to Chicago, New York, Iberville, and St. Johns. No specific rating is provided in the western classification on chip braid. Complainants state that the distinction in names is purely technical and that chip braid is included in the term "straw braid" in the import tariffs. The present record does not afford a basis upon which to determine what would have been a proper rating on chip braid, and the discussion herein will accordingly be confined to the shipments of straw braid.

Prior to June 25, 1918, an import commodity rate of \$1.75 applied on straw braid, in less than carloads, from and to the points involved. Effective June 25, 1918, as a result of general order No. 28 of the Director General of Railroads, all import rates were canceled and domestic class rates as increased, were applied on import traffic.

Import commodity rates considerably lower than the domestic rates were reestablished by defendants to points in the United States July 1, 1918, and to points in Canada July 25, 1918, on a number of commodities, including chinaware, crockery, earthenware, porcelain, glassware, fruit or jelly glasses and jars, matting, grass matting, matting pads, matting rugs, straw fiber and straw-fiber table mats, in less than carloads. Most, if not all, of these commodities are produced in the United States. Effective September 16, 1918, defendants established an import rate on straw braid of \$2.50 from and to the points in question. Complainants ask reparation to the basis of this rate, which represents an increase of approximately 42 per cent on the former import commodity rate.

Straw braid is said to be produced only in Japan and China. It is shipped in crates or bales (mostly the latter), and its movement is seasonal, being confined chiefly to the summer and fall months of the year. It is used principally in the manufacture of hats.

Complainants contend that it was unreasonable and unjustly discriminatory to charge them the first-class domestic rates on straw braid, while import rates considerably lower than the corresponding domestic rates were assessed on the other commodities referred to. They point to the fact that straw braid, in common with the other

commodities, was for many years prior to June 25, 1918, given the benefit of a special or import rate. They contend that the reasonableness of the increases over the import commodity proportional rates can not be sustained by simply showing that the increased rates would establish a uniform adjustment with the domestic class rates under which no traffic moves, and that the burden of proof is upon defendants to justify the increases of about 150 per cent.

In comparison with the commodities before described, on which import rates were reestablished on July 1, 1918, straw braid is, in general terms, stated by complainants to be of the same or less bulk from the standpoint of loading, of greater economic and industrial value, and, as to many of the commodities, less subject to damage in transit. There is no competition between those commodities and straw braid; and, upon cross-examination, witness for complainants acknowledged that he did not know of any commodity moving or having moved from and to the points here considered that is in fact fairly comparable to straw braid.

Defendants' position is that import rates as a rule are abnormally low, and that because of the effect of the war on ocean transportation and the fact that there is no domestic production of straw braid to compete with the foreign production thereof, no justification existed during the period covered by the complaints for import rates on that commodity.

The showing of a voluntary reduction in rates unsupported by other material and substantial evidence is not conclusive of the unreasonableness of the preexisting rates. We find that the rates assailed were not unreasonable or unjustly discriminatory. The complaints will be dismissed.

OO I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1221.
ABSORPTION OF SWITCHING CHARGES AT COEUR
D'ALENE.

Submitted November 12, 1920. Decided January 24, 1921.

Proposed increased through charges which would result from cancellation of provisions for absorption of switching charges at Coeur d'Alene, Idaho, on shipments of lumber and articles taking same rates originating on the Northern Pacific at that point found not justified. Suspended schedules ordered canceled.

B. H. Kiser for respondents.

R. J. Knott for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

By schedules filed to take effect October 15, 1920, the Spokane & Eastern Railway & Power Company, hereinafter called respondent, proposes to cancel provisions for absorption of switching charges of the Northern Pacific at Coeur d'Alene, Idaho, on lumber and articles taking the same rates originating on that road consigned to points on or via various other lines. The proposed cancellation would result in increases in the through charges. Upon protest of the Western Pine Manufacturers Association and the Blackwell Lumber Company, the latter hereinafter termed protestant, the schedules were suspended until March 14, 1921.

Protestant's mill at Coeur d'Alene is reached only by the Northern Pacific, which connects with the tracks of respondent at that point. Prior to federal control respondent absorbed the switching charge of the Northern Pacific on lumber and articles taking the same rates from protestant's plant, being reimbursed in part therefor by the connecting carrier which received the line haul. As a result of the coordination of railroads under federal operation respondent handled the traffic of all lines at Coeur d'Alene and operated over the Northern Pacific tracks to protestant's mill, thus eliminating the necessity for the former absorption. When federal control terminated respondent discontinued operation over the tracks of the Northern Pacific and a switching movement by the latter carrier again be-

came necessary in order that shipments from the Blackwell mill might reach respondent's line.

No attempt was made to justify the increases which would result from the cancellation, proposed, as it is, because of dispute as to divisions of joint rates from Coeur d'Alene to points on the Great Northern. If these divisions can not be adjusted satisfactorily by the parties themselves recourse may be had to us in appropriate proceedings.

We find that the schedules under suspension have not been justified and must be canceled. It will be so ordered.



INVESTIGATION AND SUSPENSION DOCKET No. 1228.
CANCELLATION OF RATES FROM NATCHEZ, MISS., AND
VIDALIA, LA., TO CHICAGO, ILL.

Submitted November 12, 1920. Decided January 24, 1921.

Proposed increased class and commodity rates from Natchez, Miss., and Vidalia, La., to Chicago, Ill., and other points, found not justified. Suspended schedules ordered canceled and proceeding discontinued.

O. O. Ogden for respondents.

B. F. Martin and *E. E. Warmath* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective October 27, 1920, respondents propose to cancel their joint class and commodity rates, except on green salted hides and scrap iron in carloads, from Natchez, Miss., and Vidalia, La., to Chicago, Peoria, and Springfield, Ill., Milwaukee, Wis., and points taking same rates, which would result in the application of higher combination rates. Upon protest of the Natchez Chamber of Commerce operation of the schedules was suspended until March 26, 1921.

The title-page of respondent Missouri Pacific's tariff I. C. C. No. A-4200, effective September 19, 1919, indicates that it names rates on "classes and commodities" from Natchez and Vidalia to Chicago,

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Peoria, etc. This tariff contains rates only on green salted hides and scrap iron from Natchez to Chicago, item 45 thereof providing that class and commodity rates from Natchez and Vidalia to Chicago, Peoria, etc., would be the same as the rates in the opposite direction published in agent Morris's tariffs I. C. C. Nos. A-143 and A-416. The latter tariffs have since been superseded by agent Kelly's tariff I. C. C. No. 877. This method of publication was not in conformity with rule 4 (i) of Tariff Circular 18-A, and we called the matter to the attention of the carrier publishing I. C. C. No. A-4200. Respondents then filed the schedules here under suspension proposing to cancel the latter tariff and providing for application of the aggregates of the intermediate rates for the future.

Respondents state that publication of specific rates as required by the tariff circular would entail considerable expense and that since the publication of I. C. C. No. A-4200 there has been no movement of any traffic under class or commodity rates from Natchez or Vidalia to the destinations in question, excepting hides and scrap iron, on which specific commodity rates are provided in the suspended schedule.

The defect in tariff I. C. C. No. A-4200 could be cured by amending agent Kelly's tariff to show that rates named therein to Natchez and Vidalia will apply "between."

We find that the proposed increased rates have not been justified. The suspended schedules must therefore be canceled. An order will be entered to that effect and this proceeding discontinued.

60 I. C. C.

No. 10062.

BADGER LUMBER COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

FIFTEENTH SECTION APPLICATION NO. 2065.

Decided January 26, 1921.

Order entered in accordance with findings in original report, 58 I. C. C., 97.

Appearances same as in original report.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATCHISON.

ATCHISON, *Commissioner*:

In our original report herein, 58 I. C. C., 97, we had under consideration defendants' rates on all traffic from interstate points to Westport, Mo., a point within the city limits but without the switching district of Kansas City, Mo., in connection with the Kansas City Railways Company's electric line, commonly called the Westport belt. We found that such rates had not been shown to be unreasonable, but that in so far as they were applicable over the lines of defendants that participated in the transportation of traffic to Kansas City switching district, and Westport on the Missouri & Kansas Railway Company's electric line, herein called the Strang line, as well as to Westport on the Westport belt, they were, and for the future would be, unduly prejudicial to complainants on the Westport belt and to traffic received at Westport by way of the Westport belt. We entered no order, but gave the carriers 60 days within which to establish a basis of rates to Westport on the commodities in which complainants are interested with the view of removing the undue prejudice found to exist.

By schedules filed to become effective in August and September, 1920, defendant St. Louis-San Francisco Railway Company proposed to cancel the joint rates on the Kansas City basis maintained by it and its connections from points in Kansas, Missouri, Oklahoma, and Arkansas to Rosedale (Forty-first street), Kans., and Westport on

60 I. C. C.

the Strang line, which it contended would remove the undue prejudice found to exist in our original report herein. Those schedules were suspended and were thereafter found not justified in *Cancellation of Joint Through Rates, M. & K. Ry. Co.*, 59 I. C. C., 404.

After the hearing of July 11, 1919, in the instant case, the parties agreed upon the establishment of certain rates on the Kansas City basis from the south via Dodson, Mo., to Westport on the Westport belt in satisfaction of the complaint. These rates were never published. Even if it be assumed that since the termination of federal control the agreement is no longer binding and that the reason therefor has ceased to exist, nevertheless, our findings in the original report herein and in *Cancellation of Joint Through Rates, M. & K. Ry. Co.*, *supra*, require the publication of Kansas City rates on the commodities in which complainants are interested from at least all of the territory covered by the agreement to Westport via the Westport belt.

The commodities covered by the agreement mentioned were brick, cement, chats, oil, sewer pipe, lumber, coal, stone, lime, plaster, drain tile, and articles taking same rates or differentials higher. The joint rates with the Strang line cover most but not all of the commodities mentioned in the agreement, and in addition include grain and grain products and hay and straw, which are among the commodities enumerated on page 99 of the original report herein as those in which complainants are interested.

The agreement as reproduced in complainants' brief provided that the joint rates there agreed upon should apply from the following territory:

Kansas City Southern Railway and its connections.

All points south of Dodson, Mo., except on and north of Missouri Pacific main line, St. Louis to Kansas City;

Points in Kansas, Arkansas, Oklahoma, Louisiana and Texas.

Missouri Pacific Railroad and its connections.

All points south of Dodson in Missouri (except on and north of Missouri Pacific main line St. Louis to Kansas City).

Points in Kansas on and south of main line west of Dodson.

Points in Arkansas, Louisiana, Oklahoma, Louisiana and Texas.

St. Louis-San Francisco Railway and connections, including Kansas City, Clinton & Springfield R. R.

Traffic originating (on high line) south of Dodson; also Springfield, Monett, Pierce City, Mo., Fayetteville, Grove Branch and Fayetteville Branch to and including Muskogee, Fort Smith, Ark., Paris, Texas, and territory east of the above described line and south of Missouri Pacific main line Kansas City to St. Louis.

Also connecting lines reaching St. Louis-San Francisco at junction points and points east on traffic originating in Missouri, Arkansas, Louisiana, Oklahoma and Texas.

Upon further consideration of the record and in view of our findings in *Cancellation of Joint Through Rates, M. & K. Ry. Co., supra*, an order will be entered at this time requiring the establishment and maintenance by defendants of carload rates from the general territory described to Westport in connection with the Westport belt on interstate shipments of brick, cement, chats, coal, drain tile, grain and grain products, hay and straw, lime, lumber and forest products, petroleum oil and its products, plaster, sewer pipe, stone, and articles taking same rates or differentials higher, which shall not exceed the rates contemporaneously maintained by them on like traffic from the same points of origin to the Kansas City, Mo.-Kans. switching district, or to Westport in connection with the Strang line.

60 I. C. C.

No. 11147.¹

BUCKEYE COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN RAILWAY
COMPANY, ET AL.

Submitted July 24, 1920. Decided December 29, 1920.

Rates on cotton seed, in carloads, from Charlotte, N. C., to Augusta and Atlanta, Ga., found to have been unreasonable but not unduly prejudicial. Reparation awarded. Reasonable rates for the future prescribed from Charlotte to Augusta.

Hugo Ignatius for complainant.

John F. Finerty and *A. M. Bull* for Director General of Railroads.

C. J. Riwey, jr., and *H. L. Walker* for Southern Railway Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Upon consideration of the record we have reached conclusions different from those suggested by him.

These cases were heard together and will be disposed of in one report. Complainant is a corporation manufacturing oil and other products from cotton seed, with mills at Atlanta and Augusta, Ga., Charlotte, N. C., and other southern points. Rates will be stated in amounts per ton of 2,000 pounds except as otherwise indicated.

In the complaint in No. 11120, filed December 29, 1919, it is alleged that the class-D rate of \$4 charged on 27 carloads of cotton seed shipped during January and February, 1918, from Charlotte to Atlanta was unjust, unreasonable, and unduly prejudicial as compared with the distance commodity rate of \$2.60 contemporaneously in effect to stations on defendants' lines directly east of and near Atlanta. The present rate is satisfactory to complainant. In No. 11147, filed January 12, 1920, it is alleged that the class-D rate of \$3.40 charged on 22 carloads of cotton seed shipped during January and February, 1918, from Charlotte to Augusta was unjust, unreasonable, and unduly prejudicial as compared with the distance com-

¹ This report also embraces No. 11120, Same v. Director General, as Agent, and Seaboard Air Line Railway.

modity rate of \$2.15 contemporaneously in effect to stations directly intermediate and adjacent to Augusta. The establishment of a rate for the future not in excess of \$2.70 is sought. We are asked to award reparation on the basis of \$2.15 to Augusta and \$2.60 to Atlanta.

The applicable class-D rate charged to Augusta was 17 cents per 100 pounds, and to Atlanta 20 cents, equivalent to \$3.40 and \$4, respectively, per net ton. Of the 22 cars shipped to Augusta, 13 moved over the defendant Southern to Hamburg, S. C., thence in a switching movement of 1 mile to Augusta, a total distance of 190 miles; and 9 moved over defendant Seaboard Air Line, hereinafter called the Seaboard, to Greenwood, S. C., 143 miles, and thence over defendant Charleston & Western Carolina, hereinafter called the Western, to Augusta, 67 miles, a total distance of 210 miles. The 27 cars to Atlanta moved from Charlotte over the Seaboard, a distance of 296 miles.

The shipments were made because of the partial destruction by fire on January 1, 1918, of complainant's mill at Charlotte. The cotton seed there stored was partially burned, and damaged by water, and it became necessary to crush it quickly in order to secure all salvage possible.

As a rule, cotton seed in carloads moves in this general territory on commodity rates. During the period of movement both the Seaboard and the Southern published distance commodity rates on cotton seed, in carloads, from Charlotte into the general territory in which Augusta and Atlanta are located. The Southern also maintained from Charlotte to Atlanta, 267 miles, a distance commodity rate of \$2.60; from Charlotte to Augusta a combination rate of \$2.55, composed of a distance commodity rate of \$2.15 to Hamburg and a class-L rate of 40 cents thence to Augusta, and distance commodity rates from Charlotte to points in northeast Georgia of \$2.40 for 190 miles, below which amount, subject to the 25 per cent increase authorized by the Director General, it contends we should not go in prescribing a rate to Augusta for the future. The distance commodity rate of the Seaboard between points in North Carolina and points in Georgia north of Savannah and east of Atlanta, but not including Atlanta, was \$2.40 for 210 miles and \$2.80 for 296 miles. A combination rate to Augusta of \$3, composed of a distance commodity rate of \$1.95 to Greenwood and a class-L rate of \$1.05 over the Western thence to Augusta was contemporaneously in effect. On June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, these rates were generally increased 25 per cent. The \$2.60 rate of the Southern from Charlotte to Atlanta thus became \$3.30, and on April 29, 1919, the Seaboard met that rate.

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Complainant contends that, as Hamburg is but 1 mile from Augusta across the Savannah River and within the Augusta switching limits, and as the distance commodity rates applicable in the Carolinas would apply for the distance from Charlotte to Augusta, the rate of \$2.15 was the maximum reasonable and nondiscriminatory rate to Augusta. Defendants' position is that these distance rates are lower than the Georgia state rates; that rates on cotton seed in Alabama are, under the laws of that state, made the same as the rates established by the Railroad Commission of Georgia; and that therefore the establishment of the rate requested by complainant might be far-reaching and depressing in its effect.

No evidence was offered and no briefs were filed by either the Seaboard or the Western. Counsel for the Director General, on behalf of the Seaboard, stated that in case we should award reparation, the rates thus applied should include the increases permitted under general order No. 28.

The record does not warrant a finding of undue prejudice. We find that the rates applicable were unjust and unreasonable to the extent that they exceeded \$2.80 per ton from Charlotte to Atlanta over the Seaboard Air Line Railway, and \$2.40 per ton from Charlotte to Augusta over the Southern Railway, or the Seaboard Air Line Railway and the Charleston & Western Carolina Railway. We further find that for the future the rates on cotton seed, in carloads, from Charlotte to Augusta over either of the two routes last named will be unjust and unreasonable to the extent that they exceed \$3 per ton, subject to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

An order for the future will be entered.

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No. 11011.

LIVE POULTRY & DAIRY SHIPPERS' TRAFFIC
ASSOCIATION

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted October 14, 1920. Decided January 24, 1921.

Second-class rating and rates on live poultry, in carloads, minimum 18,000 pounds, in official classification territory found to be unreasonable to the extent they exceed third class with the same minimum.

C. R. Hillyer and *B. W. Redfearn* for complainant.

John M. Sternhagen and *W. J. Larrabee* for defendants.

R. D. Rynder for Swift & Company; and *W. M. O'Keefe* for National Poultry, Butter & Egg Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainant and defendants and the parties were heard in oral argument.

In *Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R. Co.*, 53 I. C. C., 59, decided April 7, 1919, we ordered a reduction in the rates and rating on dressed poultry in official classification territory from first class in any quantity to not to exceed third class in carloads, minimum 20,000 pounds. At that time live poultry was, and still is, rated second class, in carloads, in the official classification, minimum 18,000 pounds. The complaint in the instant case alleges that our decision in the case cited had the effect of disrupting an adjustment of long standing between the rates on the two commodities and has resulted in the application of a rating and rates on live poultry, in carloads, in official classification territory which were and are unreasonable and unduly prejudicial as compared with the rating and rates contemporaneously applicable on dressed poultry. Complainant asks for a carload rating on live poultry not in excess of fourth class; also reparation on behalf of certain members of the complainant association.

The National Poultry, Butter & Egg Association intervened in support of the complaint. Swift & Company also intervened to protect its interests. Rates are stated in cents per 100 pounds.

There is competition between live and dressed poultry dealers in the purchase of the fowls and to some extent in the consuming market. There is, however, a special demand for live poultry which can not be met by dressed poultry or by any other dressed meat.

Approximately 60 per cent of the live-poultry traffic moving in official classification territory originates west of the Mississippi River; about 15 per cent, south of the Ohio River. The principal producing states are Missouri, Kansas, and Nebraska. Springfield, Mo., is the center of the industry. The traffic moves principally to New York and other eastern cities; by far the greater part to New York. It reaches the eastern carriers at St. Louis, Mo., and other Mississippi River crossings and at Chicago, Ill., and is transported principally over two routes, the Michigan Central or the New York, Chicago & St. Louis to Buffalo or Black Rock, N. Y., and the Delaware, Lackawanna & Western or Erie beyond. Ninety to 95 per cent of the tonnage to New York is delivered over the Delaware, Lackawanna & Western, which has special platforms at Hoboken, N. J., used exclusively for live poultry. The shipments are unloaded there by the shipper. The movement of live poultry is constant and in considerable volume, and it is claimed that on perhaps 90 per cent of it the haul is from 800 to 1,000 miles to points in official classification territory. Complainant also avers that from 20 to 40 cars in one train daily are quite usual.

Live poultry moves in cars furnished by the shipper, who obtains them under rentals from the Live Poultry Transit Company, which also operates feeding and watering stations at Kankakee, Ill., Buffalo, and Hoboken. The carriers switch the cars en route to and from sidings which adjoin these feeding and watering stations. They also pay a mileage rental for the use of the cars, which are constructed expressly for the transportation of live poultry, and are not suitable for any other kind of traffic. The cars are equipped with 128 small compartments or coops, arranged in four sections, two at the front and two at the rear of the caretaker's compartment, extending all the way across the center of the car. An aisle extending lengthwise through the car from the caretaker's compartment separates the coop sections on either side. Each of such sections is provided with a trough for feed and water. The car carries a tank for water. The sides of the car are enclosed with wire mesh. The caretaker has complete charge of the car, and performs the feeding and watering service en route.

Separate caretakers' cars are sometimes provided east of Buffalo in connection with three or more poultry cars, a circumstance which gave rise to considerable discussion in the record. Complainant asserts that these cars are neither necessary nor desired by the shippers, since they are apt to cause caretakers to spend too much time there at the expense of their duties, and that hence requests were made to carriers not to supply these cars. The carriers, on the other hand, assert that the caretaker's car was originally provided as a result of legislation by the New York state authorities, and, furthermore, that it is required by proper consideration for the health and comfort of the caretaker, which are better promoted in the caretaker's car than in the caretaker's compartment in the poultry car.

No charge is made for the transportation of the caretaker on the going trip nor for the transportation of the feed and water contained in the car, except that any surplus feed remaining in the car at destination is charged for at the less-than-carload rate on feed. The feed required for the trip from Chicago to New York is said by the defendants to average 3,000 pounds, but the complainant places the figure at nearer 1,500 pounds.

Dressed poultry is shipped in refrigerator cars under ice, and hence includes the service and expense incident to the upkeep of cars, switching to and from ice houses, maintenance of icing stations en route, and the cost of ice, which sometimes exceeds the tariff charge therefor.

A carload of live poultry is worth, according to complainant, about \$4,500, and a carload of dressed poultry about \$7,400. A mixed carload of dressed poultry, butter, and eggs, which takes the third-class rate, is said by the complainant to be worth more than a straight carload of dressed poultry. The movement of dressed poultry is more seasonal than that of live poultry and in lesser volume in straight carloads, though the combined tonnage of dressed poultry moved in straight carloads and in mixed carloads with butter and eggs exceeds that of live poultry, which was a little over 8,000 cars to New York in 1919. The average weight of more than 4,500 cars of live poultry received in Hoboken in 1918 was 18,560 pounds. The average weight of 1,500 cars of dressed poultry received at New York in the same year is shown as 23,860 pounds. Damage claims on live poultry are comparatively few.

It appears that prior to August 1, 1919, the effective date of the order in the case cited, the rate on live poultry, in carloads, from Chicago to New York was 13.5 cents less than on a carload of dressed poultry moving under the first-class any-quantity rating. The present rate on dressed poultry, in carloads, is 33.5 cents less than on live

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poultry in carloads. There has therefore been a total advantage to dressed poultry, moving in carloads, of 47 cents by reason of the change in its classification. Several shippers of live poultry testified as to the losses they have sustained because of their inability to meet the competition of dressed-poultry shippers since the rating and rates on dressed poultry were reduced.

Following is a table of comparative rates and earnings on live and dressed poultry, in carloads, from representative shipping points to Hoboken, based on the average actual weights at Hoboken of several thousand shipments made during 1918:

	Revenue load.	Rate.	Distance.	Car revenue.	Car-mile earnings.	Ton-mile earnings.
	<i>Pounds.</i>	<i>Cents.</i>	<i>Miles.</i>		<i>Cents.</i>	<i>Mills.</i>
Chicago to Hoboken:						
Live poultry.....	18,560	99	914	\$183.74	20.1	21.6
Dressed poultry.....	23,860	75	914	178.95	19.58	16.4
Kankakee to Hoboken:						
Live poultry.....	18,560	99	909	183.74	20.21	21.7
Dressed poultry.....	23,860	75	909	178.95	19.69	16.5
Louisville to Hoboken:						
Live poultry.....	18,560	99	961	183.74	19.12	20.6
Dressed poultry.....	23,860	75	961	178.95	18.62	15.6
East St. Louis to Hoboken:						
Live poultry.....	18,560	111.5	1,108	206.94	18.68	20.1
Dressed poultry.....	23,860	88	1,108	209.97	18.95	15.9
Brooklyn, Ill. to Hoboken:						
Live poultry.....	18,560	116	1,113	215.30	19.34	20.8
Dressed poultry.....	23,860	88	1,113	209.97	18.87	15.8
All freight, eastern operating region.....					26.64	9.49

Defendants present figures which purport to show that by taking into account the return empty-haul mileage of 100 per cent for live-poultry cars and 60 per cent for refrigerator cars for dressed poultry and the mileage of the caretakers' cars, the showing as to car-mile earnings becomes unfavorable to live poultry. Complainant replies by reiterating its objection to the caretaker's car, and by questioning the accuracy of 60 per cent as representing the empty-haul mileage of refrigerator cars, in view of the fact that the return empty-haul mileage of refrigerator cars owned by packers who ship dressed poultry is admitted to be as much as 95 per cent of the loaded mileage. Defendants admit that 60 per cent is only an estimate. Complainant also calls attention to other alleged defects in the carriers' figures, and emphasizes the fact that the shipper of live poultry furnishes his own car and service en route.

Defendants also refer to the elaborate facilities for unloading live poultry maintained by the Delaware, Lackawanna & Western at Hoboken. This carrier has three platforms at that point located upon 4½ acres of ground, which are devoted to the poultry traffic. The annual expenses incident to the maintenance of this yard, including 6 per cent interest on the assessed value of \$178,726 for the land, is stated by the defendants to be at least \$80,630.25. The other

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items are \$39,420 for switching an average of 12 hours a day at \$9 an engine-hour, \$18,396 for special police, \$7,922.49 for yard and office labor, and \$4,168.20 for the cleaning of the yard. None of the other carriers maintains special facilities of this kind at Hoboken or elsewhere, and complainant claims that when comparative land values are considered, it costs more to deliver dressed poultry in Manhattan island than live poultry at Hoboken.

Upon the facts of record we are of opinion and find that the present rating and rates on live poultry, in carloads, in official classification territory, both as to traffic having origin and destination in that territory and on shipments to points therein from western and southern classification territories are, and for the future will be, unreasonable to the extent that they exceed or may exceed the third-class rating and rates, minimum 18,000 pounds.

Complainant is not entitled to reparation unless the rating and rates which have prevailed in the past have resulted under all the circumstances in unreasonable charges. In our opinion this has not been shown, and reparation will therefore be denied.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

I am unable to agree with the majority report. Its effect is to rate dressed poultry in carloads higher than live poultry in carloads in official classification territory. Live poultry is now rated higher and generally moves at higher rates in all three classification territories.

In *Rates on Dairy Products*, 43 I. C. C., 700, and *Southwestern Dairy Products*, 44 I. C. C., 379, we refused to permit the carriers to cancel commodity rates on dressed poultry and to increase the rates to third class in western classification territory. In *Rates on Poultry in Western Trunk Line Territory*, 32 I. C. C., 380, and *Live Poultry & Dairy Shippers' Traffic Asso. v. Ry. Co.*, 49 I. C. C., 228, we found that the third-class rating on live poultry in carloads, minimum 20,000 pounds, was proper in western trunk line and trans-Missouri territories. The effect of these decisions is that in western trunk line and trans-Missouri territories dressed poultry was found entitled to take lower rates than live poultry.

The new departure which the majority report proposes will probably be far reaching in its effect and to my mind is not warranted on this record.

Prior to our decision in *Kansas Car-Lot Egg Shippers' Asso. v. B. & O. R. R.*, *supra*, dressed poultry was rated first class in any quantity in official classification territory. In that case we required the establishment of a third-class rating and rates on certain dairy

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products, including dressed poultry, in carloads, minimum 20,000 pounds. The establishment of this new carload rating, while live poultry in carloads remained at second class, did not disrupt any fixed relationship, as there could be no fixed relationship between an any-quantity rating and a carload rating. An any-quantity rating in effect includes a less-than-carload rating and the less-than-carload rating on dressed poultry remains first class.

Live poultry moves in straight carloads. Dressed poultry is frequently, if not generally, part of a mixture, and in official classification territory the movement in less than carloads is considerable. Dressed poultry loads over 25 per cent heavier than live poultry and the return empty movement as shown by this record is about 60 per cent as compared with 100 per cent in the case of live poultry.

No good reason appears why carriers should receive less for hauling 17,500 pounds, for example, of live poultry than they would for hauling the same weight of dressed poultry. Under this report they would receive less, for while both would be rated third class in carloads, the former would be subject to a minimum of 18,000 pounds and the latter a minimum of 20,000 pounds. In addition, in the case of live poultry the carriers would haul without extra compensation a ton or so of feed, as well as water, a caretaker, and in many instances a caretaker's car.

The complaint should be dismissed.

No. 11774.

SOUTH CAROLINA FARES AND CHARGES.

**IN THE MATTER OF INTRASTATE PASSENGER FARES
AND CHARGES AND CERTAIN CHARGES FOR SPECIAL
SERVICES WITHIN THE STATE OF SOUTH CAROLINA.**

Submitted November 29, 1920. Decided January 28, 1921.

1. Certain fares and charges required by state authority to be maintained by the respondents for intrastate transportation within the state of South Carolina, which are lower than the corresponding fares and charges maintained by respondents on interstate transportation within the state of South Carolina and between points in South Carolina and points in other states, found to be unduly prejudicial to persons and localities in interstate commerce, unduly preferential of persons and localities in intrastate commerce, and unjustly discriminatory against interstate commerce.
2. Fare maintained by respondent Seaboard Air Line Railway for the transportation of passengers between Charleston, S. C., and Savannah, Ga., found not justified.
3. Certain fares required by state authority to be maintained by respondent Seaboard Air Line Railway for intrastate transportation to and from points in South Carolina on said respondent's line between Charleston and Savannah, which are lower, distance considered, than the maximum fare prescribed herein for transportation between Charleston and Savannah over said respondent's line, found unduly prejudicial to persons and localities in interstate commerce, unduly preferential of persons and localities in intrastate commerce, and unjustly discriminatory against interstate commerce.
4. Certain other charges required by state authority to be maintained by respondents for intrastate transportation within the state of South Carolina, which are lower than the corresponding charges maintained by respondents on interstate transportation within the state of South Carolina and between points in South Carolina and points in other states, and certain baggage allowances required by state authority to be maintained by respondents in connection with intrastate transportation within the state of South Carolina, which are greater than the corresponding baggage allowances maintained by respondents in connection with interstate transportation within the state of South Carolina and between points in South Carolina and points in other states, found unjustly discriminatory against interstate commerce.
5. The failure of respondents to make a charge in addition to the regular fare against intrastate passengers in South Carolina who board trains without tickets at points where they might have purchased tickets, while contemporaneously making such a charge against interstate passengers in

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South Carolina and other southern states under similar circumstances, found unjustly discriminatory against interstate commerce. Increase on August 26, 1920, of 20 per cent in the interstate charge found not justified.

6. Fares, charges, and baggage allowances prescribed which will remove such preference, prejudice, and discrimination.

Morris C. Lumpkin for Railroad Commission of South Carolina.

John E. Benton for 42 state commissions.

Charles J. Riwey, jr., P. A. Willcow, and Frank W. Gwathmey for all respondent carriers.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

In *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, we authorized for steam railroads within a region designated as the southern group, embracing what is commonly known as southern classification territory, an increase of 25 per cent in the interstate freight rates, including the charges for switching and certain special services; an increase of 20 per cent in the interstate passenger fares, excess-baggage charges, and rates on milk and cream; and a surcharge amounting to 50 per cent of the charge for space in sleeping and parlor cars, to accrue to the rail carriers. Increased rates, fares, and charges pursuant to the authority granted were established effective August 26, 1920.

Subsequent to our decision in *Ex Parte 74*, an application was filed with the Railroad Commission of South Carolina, hereinafter referred to as the state commission, on behalf of all steam railroads operating within South Carolina and on behalf of the Piedmont & Northern Railway Company, an electric line engaged in the transportation of freight and passengers in that state, for authority to make the same percentage increases in intrastate rates, fares, and charges within South Carolina as were authorized by us on interstate traffic within the southern group. By its order of August 20, 1920, the state commission authorized the requested increases, effective August 26, 1920, with the exception of those in passenger fares and in switching charges in connection with intrastate line-haul traffic.

On August 31, 1920, certain carriers by steam railroad operating in South Carolina, and the Piedmont & Northern, filed with us a petition on their own behalf and on behalf of all other steam railroads operating in that state, for relief in accordance with the provisions of section 13 of the interstate commerce act, alleging that if they are required to charge for the transportation of passengers intrastate within South Carolina, or for the switching of carload freight in connection with intrastate line hauls in said state, a lower basis of 60 I. C. C.

fares and charges than was authorized interstate by our decision in Ex Parte 74, or are required to carry "free" for each intrastate passenger a greater amount of baggage than is allowed in connection with interstate transportation into and out of South Carolina, the result will be to cause undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one hand, and interstate commerce, on the other hand, and to cause undue, unreasonable, and unjust discrimination against interstate commerce; and that unless they are permitted to charge for the transportation of passengers and their excess baggage intrastate within South Carolina, and for the switching of carload freight in connection with intrastate line hauls in said state, fares and charges equivalent to those authorized for the transportation of interstate passengers and for the switching of cars in connection with interstate line hauls, under our decision in Ex Parte 74, the carriers within the southern group will earn less than 6 per cent upon the aggregate value of their property held for and used in the service of transportation. In accordance with this petition we instituted this investigation, to which all railroads subject to our jurisdiction operating in South Carolina have been made parties respondent.

At the hearing the state commission presented little evidence. It relies primarily upon matters of law. These were fully discussed in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, and in *Intrastate Rates within Illinois*, 59 I. C. C., 350, and need not be further dealt with here.

Before considering separately the fares and various charges in issue, it may be stated that the evidence warrants the conclusion that transportation conditions do not justify the maintenance of any of them upon a lower basis in South Carolina than elsewhere in the southern group.

PASSENGER FARES.

The basic intrastate fare in South Carolina is 3 cents per mile, except on some of the short roads, where it is 4 cents or 5 cents. A state statute provides that the rate for transportation of passengers shall not exceed 3 cents per mile, with the provisos that no railroad shall be required to charge a fare of less than 5 cents for the entire distance traveled, and that the state commission may allow any railroad operated independently to charge 4 cents per mile if it is not over 40 miles in length, and 5 cents per mile if it is not over 25 miles in length. The situation in respect of the short roads will be discussed further hereinafter. In general, interstate passengers in South Carolina pay on a basis of 3.6 cents per mile, or 20 per cent over the rate in effect on August 25, 1920, and this is the basic fare for intrastate transportation in all states in the southern group ex-

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cept South Carolina, North Carolina, and Louisiana, and generally for interstate transportation throughout the United States. Commutation and excursion fares are not in issue, as the 20 per cent increase was authorized by the state commission on all such special fares.

As evidence of discrimination between persons and between localities due to the lower state fares, it was testified on behalf of respondents that wholesale houses at Charlotte, N. C., compete with jobbers and manufacturers located at Spartanburg and other South Carolina towns, and are at a substantial disadvantage in sending their salesmen through South Carolina distributing territory. Similar situations exist as between other North Carolina and Georgia points, on the one hand, and South Carolina points, on the other.

Carriers that operate between South Carolina points over interstate routes are at a substantial disadvantage as compared with carriers that operate between the same points over intrastate routes. For example, from Charleston to Greenwood via Kollocks, S. C., an intrastate route, the distance is 214 miles and the fare \$6.33, while via Augusta, Ga., the distance is 206 miles and the fare \$7.60.

The evidence shows a growing practice of defeating the interstate fare through the purchase of intrastate tickets to or from border points in South Carolina. As illustrative of this practice, a passenger from Charlotte, N. C., to Columbia, S. C., may purchase a ticket to Fort Mill, S. C., for 61 cents, or at the rate of 3.6 cents per mile, and at Fort Mill he may leave the train and purchase a ticket to Columbia for \$2.75, or at the rate of 3 cents per mile, making the through fare \$3.36, whereas if he purchased a through interstate ticket from Charlotte to Columbia the fare would be \$3.90. The carriers claim that the continuance of the lower intrastate fares in South Carolina will break down their interstate and intrastate fares throughout the south; that neighboring states will not acquiesce in the maintenance of higher fares within their boundaries; and that it is not feasible to maintain a different basis interstate than intrastate.

Respondents submitted exhibits showing that if the present intrastate fares are continued for one year, and there is the same intrastate passenger travel during that year as in the calendar year 1919, the direct loss of seven of the South Carolina carriers, including the more important, due to their failure to secure the 20 per cent increase in intrastate fares, will approximate \$1,165,000. Based on the passenger travel during the first six months of 1920 the loss would approximate \$972,000. For one of the smaller roads, the Blue Ridge Railway, 44 miles in length, the revenue from intrastate passengers during the two periods referred to was approximately I. C. C.

mately 90 per cent of the road's total passenger revenue, and the serious effect of the maintenance of the lower intrastate fares upon this road's earnings is obvious.

Short lines.—Prior to federal control of railroads a state statute prescribed a maximum fare of 3 cents per mile, except that any railroad not over 5 miles in length and operated independently might be allowed by the state commission to charge 5 cents per mile. Upon the termination of federal control this statute was amended to provide, as aforesaid, that any railroad not over 40 miles in length and operated independently may be allowed by the state commission to charge 4 cents per mile and any independently operated railroad not over 25 miles in length, 5 cents per mile. Some of the short lines have been given such permission and are now receiving 4 or 5 cents per mile, intrastate. The record shows that the basic fares of those lines not over 40 miles in length which handle interstate passenger traffic on through tickets are 3 cents per mile, intrastate, and 3.6 cents per mile, interstate; it discloses no instance of a carrier which receives 4 or 5 cents per mile on intrastate traffic charging more on interstate traffic; and there is no basis for a finding that the intrastate fares of 4 and 5 cents per mile are violative of the interstate commerce act.

Piedmont & Northern Railway.—In Ex Parte 74 we made the following statement and findings with respect to electric lines:

Petitions have been filed in this proceeding by a national organization of electric lines, seeking permission to increase their rates in the same proportion as the rates of trunk lines are advanced. The operating costs of these lines have, on the whole, increased in approximately the same ratio as those of steam railroads. In some instances there is competition between the electric lines and the steam railroads. We conclude that the freight rates of electric lines may be increased by the same percentages as are approved herein for trunk lines in the same territory. This is not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines.

The Piedmont & Northern engages in a general freight and passenger business, both interstate and intrastate. It derives a large proportion of its revenue from interstate freight traffic, and is operated like a steam railroad except that it uses electric instead of steam locomotives. Its basic fares are 3 cents, intrastate, and 3.6 cents, interstate. It parallels the Southern Railway between Spartanburg, S. C., and Greenwood, S. C., and participates with the Southern and with the Seaboard Air Line in interstate traffic. The maintenance of a lower basis of intrastate fares on the electric line would injuriously affect its interstate revenues and no doubt result in diverting traffic from the steam railroads. No reason has been shown for such a lower basis. The situation in respect of the Piedmont &

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Northern is the same as in respect of the respondent steam railroads and it should be similarly dealt with.

Seaboard Air Line between Charleston and Savannah.—The Seaboard Air Line has two lines between Hamlet, N. C., and Savannah, Ga., one via Columbia, S. C., and the other via Charleston. The bulk of the passenger traffic between Hamlet and points north thereof, on the one hand, and Savannah and points south thereof, on the other, is handled over the Columbia line, the Charleston line being intended and used primarily for freight traffic. The Atlantic Coast Line also has a line between Charleston and Savannah. The distances between the two cities are 95 miles via the Seaboard and 110.5 miles via the Coast Line. At the time of the completion of the Seaboard's line in 1917 the Coast Line's fare between Charleston and Savannah was \$2.90, or about 2.6 cents per mile, and this fare was adopted by the Seaboard. Pursuant to general order No. 28 of the Director General of Railroads these fares were increased by 20 per cent to \$3.48, effective June 10, 1918, but subsequently the Director General reduced them to \$3.32, or to the basis of 3 cents per mile on the Coast Line's distance. Effective August 26, 1920, the fares via both routes were made \$3.99, representing an increase of 20 per cent. The fares between points in South Carolina on these lines are based on 3 cents per mile. The Seaboard asks that it be permitted to continue the fare of \$3.99, which, based on its distance, is at the rate of 4.2 cents per mile, and that the intrastate fares between points on its line be increased to the same rate per mile. The request is opposed by the state commission.

The Seaboard concedes that generally fares are based on the short-line distance, but contends that in this instance a departure from the general rule is justified by the transportation conditions. The Seaboard's Charleston-Savannah line traverses a low and swampy country in close proximity to the ocean. It is testified that fully 30 per cent of the line is built over water or swamp; that there are 16,000 feet of bridges and trestles, and that the construction of the line was expensive and the cost of maintenance is heavy. There are only a few settlements between Charleston and Savannah, the largest having a population of about 600. As shown above, the Director General permitted the maintenance of the \$3.32 fare between Charleston and Savannah by the Seaboard, although for its distance the fare approximated 3.5 cents per mile as against the then standard basis of 3 cents per mile. In support of its request the Seaboard cites *Arts v. Seaboard Air Line Railway*, 11 I. C. C., 458, wherein, in passing upon the reasonableness of the Seaboard's fare from Fernandina, Fla., to Savannah, we took into consideration the high cost of transportation on that portion of its line, and found not unreasonable a fare of approximately 4 cents per mile.

The Seaboard insists that if it is required to reduce its fare between Charleston and Savannah, it will have to reduce its fares on the Columbia line between Hamlet and points north thereof, on the one hand, and Savannah and points south thereof, on the other, and that the Atlantic Coast Line will have to make similar reductions in its main-line fares; but we are not convinced that these results would necessarily follow.

What has been said with respect to discrimination in connection with the passenger fares in general is applicable also in connection with the fares on this particular line. A passenger between Charleston and Savannah may cut the interstate fare of \$3.99 by the use of the intrastate fare of \$2.45 between Charleston and Levy, S. C., the first station north of the state boundary, and the interstate fare of 57 cents between Levy and Savannah.

At the time when the *Arts Case* was decided, little uniformity existed in passenger fares, but now the standard rate throughout the country has become 3.6 cents per mile. We think such uniformity is desirable, but it could not be maintained if it should become the policy, in fixing fares, to consider as controlling the transportation characteristics of particular lines or portions of lines. Doubtless there are other lines in South Carolina for which a rate higher than normal might well be claimed, because of cost of construction or expense of operation. In the case of short, independent lines it may be necessary to give more weight to such considerations and adjust fares accordingly. But in a case like this, where the line is a small fragment of a large system, there is no such compelling necessity. It is our conclusion that the Seaboard has not justified fares on its Charleston-Savannah line at a rate in excess of the standard 3.6 cents per mile.

MINIMUM CHARGE.

During federal control the minimum charge per passenger in South Carolina was 10 cents, both intrastate and interstate, and this applied generally throughout the southern group. Effective August 26, 1920, the interstate minimum was increased 20 per cent to 12 cents, and effective September 1, 1920, the intrastate minimum was reduced to 5 cents. As previously stated, the 5-cent minimum is fixed by state statute. The 12-cent minimum applies intrastate in all other states in the southern group. The carriers ask that the intrastate minimum be made 12 cents, claiming that the maintenance of the lower intrastate charge unjustly discriminates against interstate passengers. They also say that when *Ex Parte 74* was decided the minimum intrastate charge was 10 cents, that they took the revenue therefrom into consideration in submitting estimates in that proceeding to show the

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increases in rates, fares, and charges necessary to yield the return prescribed by section 15a of the interstate commerce act, and that the continuance of the lower intrastate minimum will prevent their earning the amount contemplated in Ex Parte 74.

Respondents, with the exception of the Piedmont & Northern, submitted no evidence to show definitely the effect on their revenues of the continuance of the lower intrastate minimum. They claim, however, that it is substantial. It was testified that there are 308 stations in South Carolina on the Southern Railway between which the minimum charge of 12 cents would be applicable, and that this is typical of other lines in that state. For the Piedmont & Northern it is shown that the reduction of the intrastate minimum from 10 cents to 5 cents would have decreased its revenues for the months of April and July, 1920, by \$270.60. Extended at the same rate for a year the decrease would be \$1,623.60, which is less than 0.4 per cent of the Piedmont & Northern's total passenger revenue in South Carolina for the year 1919, both intrastate and interstate. The record indicates that the Piedmont & Northern has more stops per unit of length than have the steam railroads and therefore would be more seriously affected by the minimum charge.

Respondents compare the minimum charge of 5 cents with the street-railway fare of 7 cents which prevails generally throughout South Carolina. The expense of starting and stopping a railroad train is no doubt greater than the expense of starting and stopping a street car, but the conditions surrounding street-railway and steam-railroad transportation are so different that the comparison is of little value. In determining the reasonableness of the minimum charge of 12 cents consideration should be accorded the fact that prior to August 26, 1920, the minimum charge of 10 cents applied throughout the southern group on both interstate and intrastate traffic, and that in Ex Parte 74 we found an increase of 20 per cent justified in all passenger fares and charges. Taking into consideration also the services accorded a passenger traveling a distance less than $3\frac{1}{2}$ miles, we think the minimum charge of 12 cents not unreasonable, and the minimum of 5 cents less than reasonable, although the amount involved is so small that the carriers might well have kept the minimum at the more convenient sum of 10 cents.

The law requires us to fix rates, fares, and charges so that the carriers shall, under specified conditions, earn, as nearly as may be, a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and it follows that to the extent that intrastate rates, fares, and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. While in this instance the intrastate

minimum charge apparently has no very substantial effect upon the revenues of any one carrier, yet if the same charge were established throughout the southern group, and if similar discriminations were permitted in other minor rates, fares, and charges, the effect upon revenues might become considerable. It is clear that the question whether the intrastate charge is unjustly discriminatory against interstate commerce does not depend upon the amount of revenue involved.

CONDUCTOR'S PENALTY CHARGE.

During federal control and at the time Ex Parte 74 was decided, a charge of 15 cents, in addition to the regular fare, was made against any interstate or intrastate passenger who, having boarded a train at a station in the southern group where a ticket office was open at the time, paid his fare in cash. On August 26, 1920, this penalty charge in connection with interstate transportation was increased 20 per cent to 18 cents. No refund check is given when such a charge is paid. On September 1, 1920, the charge was eliminated in connection with intrastate transportation in South Carolina, it being contrary to the maximum-fare statute previously referred to. Respondents ask that the same charge be made in connection with intrastate transportation as in connection with interstate transportation, making substantially the same claims as in respect of the minimum fare. They included in their estimates submitted in Ex Parte 74 amounts received from this source, and the absence of such a charge in connection with intrastate transportation in South Carolina will no doubt reduce their revenues somewhat.

The purpose of the charge is to discourage the payment of cash fares by passengers who could have obtained tickets, and thus to simplify the duties of the conductor and in other respects promote safe and efficient service to the public. Such a charge, if reasonable in amount and in the conditions under which it is levied, has been recognized as proper by the courts and by us. *Sidman v. Richmond & Danville R. Co.*, 3 I. C. C., 512, 518.

In Ex Parte 74 we authorized an increase of 20 per cent in "all passenger fares and charges," but the underlying purpose of such authorization was the increase of revenue. The conductor's penalty charge is not levied for direct revenue purposes, but to facilitate the efficient handling of traffic and the collection of fares, and it was not our intent in Ex Parte 74, although the language used may give color to the claim, to authorize an increase in charges of this character. We think, therefore, that the increase in the conductor's penalty charge from 15 cents to 18 cents has not been justified, but

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upon this record we are not prepared to find that 15 cents is an unreasonable amount. It is also our opinion that the absence of such a charge for intrastate application in South Carolina can hardly fail to have a prejudicial effect, not only upon intrastate, but upon interstate passenger traffic as well, and that it is unjustly discriminatory against interstate commerce. Our conclusion as to the amount is without prejudice to any further consideration of the charge in the future upon a more comprehensive record.

BAGGAGE ALLOWANCE.

During federal control and when *Ex Parte* 74 was decided, intrastate and interstate passengers in South Carolina and throughout the United States were permitted to carry 150 pounds of baggage without additional charge, except that children traveling on half-fare tickets were allowed only 75 pounds. Prior to federal control the intrastate allowance in South Carolina was 200 pounds and this allowance again became applicable in connection with intrastate transportation in that state on September 1, 1920. A South Carolina statute prescribes that 200 pounds of baggage shall be transported without additional charge. The record does not disclose whether the intrastate allowance for a child traveling on a half-fare ticket is less than for an adult. The allowances of 150 and 75 pounds continue to apply throughout the country in connection with interstate transportation and, with very few exceptions, in connection with intrastate transportation. The carriers ask that the intrastate allowance in South Carolina be reduced to the level of the interstate allowances.

The charges on excess baggage in connection with interstate and intrastate transportation throughout the southern group are based upon a percentage of the fare, and this is true, in general, throughout the country. In *Ex Parte* 74 we said that excess-baggage rates might be increased 20 per cent, provided that where stated as a percentage of or dependent upon passenger fares the increase in the latter would automatically effect the increase in the excess-baggage charge. While the South Carolina state commission did not authorize the 20 per cent increase in passenger fares, it did authorize such an increase in the excess-baggage charges, these, in South Carolina, being now based upon a percentage of the intrastate fares increased by 20 per cent.

The carriers' estimates submitted in *Ex Parte* 74 were based upon a baggage allowance of 150 pounds both interstate and intrastate and it is clear that the maintenance of the higher allowance in South Carolina will tend to reduce the revenues of respondents below

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that contemplated in Ex Parte 74. Respondents were unable to submit evidence showing definitely how much less their revenues would have been during any past period under an intrastate allowance of 200 pounds than under an allowance of 150 pounds. For the Southern Railway it is estimated the difference for one year would be approximately \$5,600, this amount being arrived at by taking one-third of the total excess-baggage collections intrastate in South Carolina for the year 1919 increased by 20 per cent. Similarly, the difference for the Atlantic Coast Line is estimated at approximately \$4,600. While the amount of the difference for any one carrier clearly would represent a very small percentage of that carrier's total intrastate passenger revenue in South Carolina alone, what we have said with respect to the minimum fare is likewise applicable here.

The allowance of 150 pounds has been in effect interstate for many years and its reasonableness seems never to have been attacked. It has also applied intrastate in nearly all the states since prior to federal control. In our opinion it is a reasonable allowance.

SWITCHING CHARGES.

The charge for switching a loaded car in intrastate transportation in South Carolina to or from a connecting carrier, where the charge is not absorbed by the connecting line and a line haul is involved, is \$1, the maximum prescribed by statute, except at Columbia, where a charge of \$1.50 is authorized. These charges have been in effect since prior to federal control. For similarly switching a car in interstate transportation in South Carolina and throughout the southern group, and in intrastate transportation in all other states in the southern group, the charge is \$2.50, representing an increase of 25 per cent over the charge in effect on August 25, 1920.

The carriers show that the lower charges on intrastate traffic result in undue prejudice against persons and localities in interstate commerce and undue preference of persons and localities in intrastate commerce. Many commodities are handled in both interstate and intrastate commerce in South Carolina, as, for example, fertilizer, cotton seed, cottonseed hulls, cotton, brick, ice, lumber and forest products, live stock, scrap iron, sand, stone, gravel, lime, cement, and cotton factory sweepings, and there is direct competition between interstate shippers or receivers and intrastate shippers or receivers of such articles. The general flow of traffic intrastate in South Carolina is very similar in character to that between South Carolina, on the one hand, and North Carolina and Georgia on the other. Both North Carolina and Georgia jobbers and manufacturers distribute extensively in South Carolina, as do also jobbers

located in Virginia. As a concrete example, cottonseed-oil mills located on the Atlantic Coast Line's tracks at Columbia, S. C., compete with similar mills located on the tracks of the Southern Railway at Raleigh, N. C., in the sale of their products at Whitmire, S. C., a local station on the Seaboard Air Line. For the switch movement from the mill to the Seaboard Air Line the Raleigh mill pays \$2.50 per car and the Columbia mill \$1.50.

To show that the intrastate switching charges do not cover the out-of-pocket cost of the service, respondents submit the following figures covering switching of loaded cars at six points in South Carolina on the Southern Railway:

	Cars switched per engine-hour.	Cost per engine-hour.	Cost per car switched.	Cost for two movements.	Per diem.	Total.
Greenville.....	15.2	\$11.375	\$0.748	\$1.49	\$2.70	\$4.19
Spartanburg.....	11.6	11.045	.95	1.90	2.70	4.60
Columbia.....	9.8	11.415	1.16	2.32	2.70	5.02
Hamburg.....	11.4	11.365	.997	1.99	2.70	4.69
Rock Hill.....	8.9	10.585	1.18	2.36	2.70	5.06
Charleston.....	3.8	11.30	2.97	5.94	2.70	8.64
Average.....	10.1	11.17	1.33	2.66	2.70	5.36

The exhibit includes not only all cars switched to and from industries from and to connecting carriers, with which service we are here concerned, but also all cars handled through yards in what is termed through business. It is testified that industrial switching is more expensive than switching in connection with through movements, and as supporting this it is observed that at Charleston, where nearly all the switching is to or from industries, the cost per car is much greater than at any of the other points named, and that at Greenville and Spartanburg, where the through movement is heavy, the cost per car is less than at the other points. The costs per engine-hour, it will be observed, do not vary greatly. They include merely transportation costs, without allowance for overhead cost or cost of maintenance of way and equipment. Otherwise the costs per engine-hour are not analyzed. As industrial switching includes also the placing or removal of the empty car, for which no additional charge is made, the cost for switching the loaded car is doubled to arrive at the cost for the total service, it being assumed that the cost of switching the empty car is approximately the same as the cost of switching the loaded car. Finally there is added the former per diem charge of 90 cents for three days, which is assumed as the minimum average detention for cars handled in industrial switching. While the exhibit is not conclusive as to the cost of the service, it is entitled to weight.

It was testified that where the charge for intrastate switching is absorbed by the carriers, the carriers themselves, recognizing the non-compensatory character of the \$1 and \$1.50 charges, adopted a charge of \$2, now \$2.50. The charge for interterminal and intraterminal switching, not connected with line hauls, was made \$4 per car for single-line service and \$5 for two-line service by the state commission prior to federal control. The Director General made the single-line rate for intraterminal service \$5 per car and for interterminal service \$6.50.

While it was testified that the switching operations in South Carolina are in general simple, it does not appear that they are more so than in other states in the southern group generally.

FINDINGS.

Passenger fares.—Excluding from our finding any respondent whose line is not over 40 miles in length and whose intrastate fares are on the basis of 4 or 5 cents per mile, we are of the opinion and find that, with the exception of the increase made by respondent Seaboard Air Line Railway in its fare between Charleston, S. C., and Savannah, Ga., the increases made by the respondent steam railroads under Ex Parte 74, relating to passenger fares, and now in effect, and the corresponding increases made by the Piedmont & Northern Railway Company, and now in effect, result in reasonable passenger fares for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the standard intrastate fares correspondingly within the state of South Carolina has resulted and will result in intrastate fares lower than the corresponding interstate fares, in undue prejudice to persons traveling in interstate commerce within the state of South Carolina and between points in the state of South Carolina and points in other states, in undue preference of and advantage to persons traveling intrastate in South Carolina, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares.

We further find that the reasonable maximum fare for the transportation of passengers between Charleston and Savannah by way of the Seaboard Air Line Railway is, and for the future will be, \$3.42, which is on the basis of 3.6 cents per mile.

We further find that the failure of respondent Seaboard Air Line Railway to increase its intrastate fares to and from points in South Carolina on its line between Charleston and Savannah correspond-

ingly with the increases made by said respondents in their interstate fares as aforesaid has resulted and will result in intrastate fares lower than the corresponding interstate fares, in undue prejudice to persons traveling in interstate commerce within the state of South Carolina and between points in the state of South Carolina and points in other states, in undue preference of and advantage to persons traveling intrastate in South Carolina, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares which shall result in fares corresponding, distance considered, with the interstate passenger fare between Charleston and Savannah hereinabove found reasonable for maintenance by respondent Seaboard Air Line Railway.

Minimum fare.—We further find that the increases made by the respondent steam railroads under Ex Parte 74, relating to the minimum charge per passenger, and now in effect, and the corresponding increase made by respondent Piedmont & Northern Railway Company, and now in effect, result in reasonable minimum charges per passenger for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to maintain the intrastate minimum charge per passenger for transportation within the state of South Carolina which was in effect when Ex Parte 74 was decided and to increase said charge correspondingly, has resulted and will result in intrastate charges lower than the corresponding interstate charges and in unjust discrimination against interstate commerce.

We further find that said unjust discrimination can and should be removed by increasing said intrastate charges to the level of the corresponding interstate charges.

Conductor's penalty charge.—We further find that the failure of said respondents to make a charge in addition to the regular fare against intrastate passengers in South Carolina who board trains without tickets at points where tickets might have been purchased while contemporaneously making such a charge against passengers traveling in interstate commerce in the state of South Carolina or between points in the state of South Carolina and points in other states, has resulted and will result in unjust discrimination against interstate commerce.

We further find that said unjust discrimination can and should be removed by establishing, maintaining, and applying a charge not in excess of 15 cents against any passenger traveling in interstate commerce within the state of South Carolina or between a point in the state of South Carolina and a point in another state who boards a train without a ticket at a point where a ticket might have been

purchased, and by establishing, maintaining, and applying a like charge against any passenger traveling in intrastate commerce within the state of South Carolina under similar circumstances.

Baggage allowance.—We further find that the amount of baggage transported without additional charge for interstate passengers in South Carolina and between points in South Carolina and points in other states, is reasonable; that the transportation without additional charge of a greater amount of baggage for passengers traveling in intrastate commerce within South Carolina under corresponding fare, that is, full fare or half fare, results in unjust discrimination against interstate commerce; and that said unjust discrimination can and should be removed by reducing the intrastate baggage allowance to the level of the interstate allowance.

Switching charges.—We further find that the increases made by the respondent steam railroads under Ex Parte 74, relating to switching charges, and now in effect, and the corresponding increases made by respondent Piedmont & Northern Railway Company, and now in effect, result in reasonable charges for switching cars in connection with interstate line hauls within the group considered in this proceeding, and that the maintenance of lower charges for switching cars in connection with intrastate line hauls within the state of South Carolina results in undue preference of and advantage to persons and localities in intrastate commerce within the state of South Carolina, in undue prejudice and disadvantage to persons and localities in interstate commerce, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by increasing said intrastate charges to the level of the corresponding interstate charges.

We further find that, whether the aforesaid fares, charges, or baggage allowances pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the authorities of the state of South Carolina or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fares, charges, or baggage allowances on the ground that the latter are not related to the interstate fares, charges, or baggage allowances in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, Commissioner, dissents.

No. 11829.

NEBRASKA RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND CHARGES OF THE UNION PACIFIC RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF NEBRASKA.

Submitted January 21, 1921. Decided January 27, 1921.

Rates, fares, and charges required by Nebraska state authorities found to subject interstate traffic, and persons and localities outside the state, to undue prejudice and disadvantage and to constitute an unjust discrimination against interstate commerce.

Alfred P. Thom, H. A. Scandrett, J. M. Souby, A. A. McLaughlin, Bruce Scott, and Kenneth F. Burgess for steam carriers.

H. G. Taylor and Hugh LaMaster for Nebraska State Railway Commission.

Henry T. Clarke for Omaha Grain Exchange; *Victor E. Wilson* for Trenmor Cone; *W. S. Whitten* for Lincoln Chamber of Commerce; *J. H. Tedrow* for Kansas City Chamber of Commerce and Kansas City Live Stock Exchange; *W. J. C. Kenyon* for St. Joseph Commerce Club; *J. P. Haynes* for Sioux City Chamber of Commerce; and *E. L. Walters* for Council Bluffs Chamber of Commerce.

REPORT OF THE COMMISSION.

DANIELS, Commissioner:

This proceeding was instituted to determine whether the rates, fares, and charges required by Nebraska state authorities to be applied to the intrastate traffic of railroads subject to our jurisdiction in that state are unlawful in their relation to the rates, fares, and charges of the same carriers applicable to interstate commerce.

In *Increased Rates*, 1920, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to as Ex Parte 74, this Commission, under authority conferred upon it by the interstate commerce act, divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific. These groups, in our view, represented a proper division of the country for the purposes of considering the financial condition of the carriers and fixing upon general increases in rates. We found that for freight services the carriers might increase their charges by various percentages ac-

cording to the several groups. In the western group, which includes Nebraska, an increase of 35 per cent was authorized. For passenger service, including the transportation of excess baggage and milk and cream, we authorized a uniform increase of 20 per cent in fares and charges throughout the country and authorized a surcharge on passengers in sleeping and parlor cars equal to 50 per cent of the charge for space in those cars, to accrue to the rail carriers. It was our conclusion that these various increases would result in transportation charges—

not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

In reaching this conclusion, we anticipated that the various state authorities would grant corresponding increases, as most of them have since done. Tariffs were filed establishing these increases in interstate rates effective August 26, 1920.

The carriers at that time had pending before the Nebraska State Railway Commission an application for like increases in their intrastate rates, fares, and charges. The Nebraska commission rendered its decision August 23, 1920. As to passenger fares, it held that an act of the state legislature in 1907, prescribing a 2-cent fare, left that commission without discretion or jurisdiction to authorize any increase. The basis of fare at the time the application was filed was, and it still is, 3 cents per mile, established June 10, 1918, by general order No. 28 of the Director General of Railroads, and superseded the statutory fare. The state authorities were recently enjoined from enforcing the 2-cent fare. The Nebraska commission did allow a 20 per cent increase in fares on extra-fare trains and in charges for special trains, authorized the establishment of the same surcharge for travel in sleeping and parlor cars as we authorized, and permitted the same increases in excess-baggage charges and in rates on milk and cream as we did. Increases in charges for freight services were permitted, but not to the extent authorized by us. In general, the charges for freight services were permitted to be increased 25 per cent. However, on sand, crushed rock, and gravel it was provided that the increased rates should not exceed the rates in effect prior to general order No. 28 by more than 60 per cent. Apparently this was to avoid what were regarded as undue increases on short-haul traffic. It will be recalled that general order No. 28 provided increases in cents per 100 pounds on these commodities, which on some

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short-haul traffic exceeded 25 per cent. The Nebraska commission excepted the rates on brick and hollow building tile from any increases, and reserved them for subsequent investigation. The increases that were permitted were generally made effective on or before September 3, 1920.

As their application was not granted in full, the steam railroads of Nebraska subject to our jurisdiction complained to us by petition, whereupon we instituted this proceeding. Electric lines offered no evidence, and the term "carriers," as hereinafter used, means only steam carriers.

The carriers estimate, upon what appears to be a fair basis, that on a year's business their revenues from Nebraska intrastate traffic would be about \$3,200,000 less than if the increases authorized by us for interstate commerce were applied intrastate. This loss, as it is termed by the carriers, would be doubled if the statutory fare of 2 cents were restored.

The interstate fares of the respondent carriers are generally on the basis of 3.6 cents per mile, while the Nebraska intrastate basis, as above stated, is 3 cents per mile. The record establishes that the interstate fares are being defeated, and interstate commerce interfered with or destroyed, by passengers purchasing tickets to points near the state borders, there buying new tickets and immediately resuming their journey on the same train. This practice and its discriminatory effects are considered in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350; *Wisconsin Passenger Fares*, 59 I. C. C., 391; *Ohio Rates, Fares, and Charges*, 60 I. C. C., 78; and similar recent cases. State and interstate passengers generally ride on the same trains, often side by side in the same seat. The service and accommodations afforded both are the same and there is no substantial difference in the circumstances and conditions under which the transportation is performed. There is much rivalry between Nebraska cities and the cities in adjoining states and, on account of the 20 per cent difference in fares as against the cities outside the state, parties whose places of business are located at such places and who travel or draw trade to and from points within the state are at a disadvantage as compared with their competitors within the state. Various examples of the disparities are shown by the record. As an illustration, Council Bluffs, Iowa, is just across the Missouri River from Omaha, Nebr., and the additional distance from Nebraska points is 3 miles. Prior to August 26, 1920, the fares from Nebraska points to Council Bluffs were but 25 cents higher than to Omaha, this being the amount of the bridge arbitrary. Since that time, by reason of the fares from all Nebraska points to Council Bluffs having been increased

20 per cent while no increases have been made in the fares within the state of Nebraska, the disparity between the fares has been materially widened and from points in central and western Nebraska the difference is now substantial and material in its effect. A typical example is the situation with respect to the fares from Nebraska points to Omaha and Sioux City, Iowa, via the Chicago & North Western Railway. The distance from Chadron, Nebr., to Sioux City is 402 miles; to Omaha, 447 miles. Prior to August 26, 1920, the interstate fare from Chadron to Sioux City was \$12.20, based 25 cents over South Sioux City, Nebr. The present fare is \$14.64, representing a 20 per cent increase. The fare from Chadron to Omaha is \$13.41. Sioux City formerly had an advantage over Omaha of \$1.21, and although it is 45 miles nearer to Chadron than is Omaha it is now at a disadvantage of \$1.23.

The carriers and the Nebraska commission offered evidence as to the relative cost of interstate versus intrastate passenger service. The carriers conclude that it costs more to handle the intrastate than the interstate traffic. They assert that the hauls on intrastate traffic are generally shorter and that therefore it is less profitable. They refer to the extensive branch-line service that is performed intrastate, and say the traffic is light as compared with the through main-line travel which constitutes a very large portion of the interstate traffic. In other words, it is said that the traffic density is greater in interstate than in intrastate commerce and the revenue therefrom relatively greater. Data were offered to support these statements. Figures submitted by the Nebraska commission purport to show that intrastate passenger traffic is more dense, and it is pointed out that on the branch lines, where intrastate travel probably predominates, the roadways are not kept up to the same degree of maintenance as is found on the main lines. The equipment used on the branch lines is often of lower grade. The conclusions to be drawn from the evidence of both interests depend upon the extent to which it is taken for its face value or subjected to criticism and analysis. We are unable to reach any satisfactory conclusion upon this record as to whether it costs more or less to handle the intrastate than the interstate traffic in Nebraska. There is probably not much difference in the cost. Moreover, cost is only one of the elements to be considered. Even if we could determine the cost of the service, the question of what would be a proper relationship of fares would still be a matter of judgment. If it does cost more to handle one character of passenger traffic than the other it would not necessarily follow that there should be a difference in fares. The usual basis of fare almost the country over for interstate or intrastate, local or joint, main or branch line service, is 3.6 cents per mile. Minor dif-

ferences in circumstances and conditions are not reflected in the fares. In Nebraska we find no conditions, local or intrastate, which suggest the advisability of any lower fare than is charged elsewhere in the same general section of the country. In *Western Passenger Fares*, 37 I. C. C., 1, decided December 7, 1915, we fixed 2.4 cents per mile as a reasonable basis for interstate fares in that portion of western territory embracing Nebraska. Since then there have been such increases in operating costs as fully to warrant a fare 50 per cent higher, or 3.6 cents per mile.

Turning now to the matter of freight rates: The carriers first press upon our attention the fact that in 1907 the Nebraska legislature required a 15 per cent reduction in all intrastate rates on live stock, potatoes, grain, grain products, fruit, coal, lumber, and building material, in carloads, and that in 1914 the Nebraska commission required a reduction, said to approximate 20 per cent, in the class rates.

We have had several cases in recent years involving the relatively lower rates within Nebraska than applied interstate. In *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, decided July 3, 1916, we prescribed for the future, for distances up to 700 miles, a reasonable maximum scale of class rates between Council Bluffs and Sioux City, Iowa, St. Joseph and Kansas City, Mo., and Atchison, Kans., on the one hand, and points in the state of Nebraska, on the other. We also found that the then existing class rates between the above-named points, as compared with rates on a generally lower basis between 13 Nebraska commercial centers and points in the state, were unduly preferential to Omaha and other Nebraska cities and subjected Council Bluffs, Sioux City, St. Joseph, Kansas City, and Atchison to undue prejudice and disadvantage. An order was entered requiring the removal of unlawful disparities, which was complied with by establishing the scale of class rates we had prescribed, not only interstate but also intrastate from and to the Nebraska commercial centers found to have been unduly preferred. The intrastate class rates that did not come within our findings were generally not changed, but continued on a lower basis than the interstate rates.

In *South St. Joseph Live Stock Exchange v. C., B. & Q. R. R. Co.*, 53 I. C. C., 114, decided April 26, 1919, we found that the then existing rates for the transportation of live stock to St. Joseph and Kansas City, from Nebraska stations west of Aurora on the line of the Chicago, Burlington & Quincy Railroad extending through Aurora, Broken Bow, and Alliance, Nebr., and from stations on the Ericson, Burwell, and Sargent branches, though not unreasonable, were unjustly prejudicial to the extent that they exceeded the rates to Omaha by more than certain amounts. We entered an order requiring the

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removal of the discrimination, and it was complied with by increasing the intrastate rates to Omaha to observe the required differentials. It should be said that this case is now before us again, it having been reopened upon the petition of Omaha interests who alleged that the increased rates to Omaha were higher than to St. Joseph and Kansas City for equal distances. Further hearing has been had on the question of proper and nondiscriminatory rates to these markets.

In *Town of Torrington v. C., B. & Q. R. R. Co.*, 51 I. C. C., 414, decided November 4, 1918, we found that during the period of private control the rates on cattle, hogs, and sheep from Torrington, Wyo., to Omaha, though not unreasonable, were unduly prejudicial to the extent that they exceeded the intrastate rates from Henry, Nebr., to Omaha by more than 2 cents per 100 pounds, Torrington being the first station west, and Henry the first station east, of the Wyoming-Nebraska state line. No order for the future was entered, as the Director General was not a party to the proceeding; but he corrected the situation by increasing the intrastate rates.

As the result of the findings in these cases, proper rate relationships were established as between intrastate and interstate commerce there involved, and they were not disturbed by increases made under general order No. 28. However, through the recent increase of 35 per cent in the interstate rates and the lesser increase of 25 per cent in the intrastate rates, the relative equality that had been accomplished was destroyed, and a substantially lower level of rates now applies intrastate than interstate. The record indicates that there has been no change in the conditions since these cases were decided that would justify anything but similar findings on the question of relationship. The evidence here with respect to these rates is largely of the same character as that offered in the earlier cases.

There is a heavy movement of live stock from Nebraska points to South Omaha, Nebr., and to markets outside the state such as Sioux City, St. Joseph, and Kansas City. All these points have packing houses which consume the greater proportion of the receipts and are in keen competition with each other in purchase of live stock in Nebraska. Prior to 1907, the live-stock adjustment is said by the carriers to have been fairly satisfactory to the various interests, but by the 15 per cent reduction in 1907, Omaha was afforded an advantage which it did not previously have. And now the 35 per cent increase interstate as against the 25 per cent increase intrastate has increased the difference in favor of Omaha.

Prior to August 26, 1920, Council Bluffs and Omaha, recognized as practically one community, had equal rates on grain from Nebraska. At present the rates to Omaha range from 0.5 cent to 2 cents lower

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than to Council Bluffs. Some of the grain that moves to Council Bluffs ultimately finds a market in Omaha, and as the grain business is said to be conducted on narrow margins of profit, it is difficult if not impossible for Council Bluffs dealers to compete in Omaha with Omaha dealers. Incidentally, the grain which is handled through elevators and then shipped out to the east or south, as most of it is, is not affected, for the reason that it moves interstate, and the interstate rates apply on both the inbound and the outbound movements.

Some hay is produced in Nebraska and moves largely to the Missouri River markets, which are in competition with each other. The differences as against Kansas City have been materially increased by the failure of the Nebraska commission to grant the same increases as we did. The parity that formerly existed as between Omaha and Council Bluffs has been destroyed.

There is an important production of potatoes in Nebraska. What is said above regarding the rates on hay may be applied to the rates on potatoes.

Considerable lumber is jobbed from points such as Omaha and Lincoln in competition with jobbers and producers outside the state. The greater percentage increase in the interstate rates than in the intrastate rates puts the interstate shippers at a disadvantage.

We have stated that the intrastate rates on sand and gravel were permitted to be increased subject to the qualification that the rates should in no case be more than 60 per cent higher than the rates in effect prior to the effective date of general order No. 28. The rate from Cedar Creek, Nebr., to Pacific Junction, Iowa, was originally 1.5 cents per 100 pounds, the same as to Plattsmouth, Nebr., just across the river. Under general order No. 28 the rate to both points became 2.5 cents. At present the rate to Pacific Junction is 3.5 cents, due to the 35 per cent increase, but the rate to Plattsmouth remains at 2.5 cents. In other words, the increase under general order No. 28, which was 1 cent per 100 pounds, was itself about 60 per cent of the rate in effect prior thereto. It was testified by a witness for the Nebraska commission that some of the rates on sand in eastern Nebraska are from 50 to 60 per cent higher than those for equal distances in western Iowa. However, it was admitted that there are rates from Nebraska points to Omaha that are perhaps as low as can be found anywhere in the country. The sand and gravel traffic has grown considerably in recent years on account of the construction of new roads. The principal movement is for short distances.

The greater increase interstate than intrastate in the charges for special services such as reconsignment, switching, etc., operates to the disadvantage of interstate commerce. Formerly, if a car of
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grain from a Nebraska point to Lincoln, Nebr., was there reconsigned to Omaha, the charge paid for reconsignment was the same as that applied if the car were reconsigned to Council Bluffs, but now the reconsignment charge on interstate shipments is 10 per cent higher than on intrastate shipments. Council Bluffs and Omaha grain dealers are in keen competition with each other.

The above are given as examples of the disadvantages brought about by the conflict between the Nebraska commission's decision and that of this Commission. Many others could be cited. The carriers put in evidence a large volume of tariffs, said to contain every intrastate rate in Nebraska. These tariffs also contain many corresponding and related interstate rates, which have been subjected to a 10 per cent greater increase than have the intrastate rates.

According to the computations of the Nebraska commission, the increases it allowed would yield a return of about 6 per cent on \$331,846,206, which was roughly estimated to be the value of the carriers' property in Nebraska devoted to state and interstate commerce.¹ In other words, in limiting the carriers to the increases above stated, the Nebraska commission proceeded on the theory that each state could create a rate group of its own in addition to those fixed by us under the act in Ex Parte 74. This point was considered in *Intrastate Rates within Illinois*, 59 I. C. C., 350, 364, where we said:

In our decision in *Increased Rates, 1920*, we fixed the increases in rates, fares, and charges necessary to comply with the act. It must be remembered that in fixing those increases we were acting within our power "to prescribe just and reasonable rates." The resulting rates therefore become, in effect, what Congress has deemed on the whole necessary to yield the carriers the prescribed return on the value of their property.

It is further urged that in *Increased Rates, 1920*, we did not find the value of any railroad property in the state of Illinois or elsewhere in the eastern or western groups as designated in that report. We were directed to prescribe rates so that in the aggregate they would yield a certain return, as nearly as may be, "upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." We understand the interstate commerce act to require us to determine upon a valuation for the total property of the carriers and not for the property that might by some necessarily arbitrary method or formula be assigned to interstate traffic, and that is the course we followed in arriving at the estimated value used in *Increased Rates, 1920*.

¹ From data of the carriers in the western district, contained in Exhibit No. 1 (p. 2) in Ex Parte 74, the Nebraska commission has taken the total property investment and mileage owned of the entire systems of carriers operating in Nebraska, and therefrom has secured the average property investment of those carriers per roadway mile owned. It has applied such averages per mile value to the total roadway mileage within the state of Nebraska, and has then reduced such result by the same percentage as the total property investment account of carriers in the western district was reduced by us in Ex Parte 74.

Neither the value of property nor the reasonableness of rates can be determined with mathematical exactness. The final test to be applied is a matter of informed judgment. Differences in judgment as among the several state commissions, if each could and would create a rate group of its own, would obviously nullify the fundamental purposes of the transportation act.

The Nebraska commission seems to be of the opinion that a 35 per cent increase in Nebraska intrastate rates would make them unduly high and require the people of the state to contribute in an unfair proportion to the total revenues of the carriers. That the rates in Nebraska might be made too high can not be proved by data of the kind used by the Nebraska commission in computing valuation. Moreover, if there are any conditions that justify less than a 35 per cent increase in this section of the west, the conditions are probably not circumscribed by the state's boundary lines, but affect interstate as well as intrastate rates.

No evidence was offered with respect to excursion, convention, and other fares for special occasions, commutation, and other multiple forms of tickets, or club-car charges. Therefore our findings and order, so far as fares are involved, will relate only to the standard local and interline fares.

Subject to the above reservation, we are of the opinion and find that the increases made by the carriers in passenger fares, under our decision in Ex Parte 74, and now in effect, result in reasonable passenger fares for interstate transportation within the group considered in this proceeding, and that the failure of respondents within the state of Nebraska to increase intrastate fares correspondingly has resulted in the past and will result in the future in intrastate fares lower than the corresponding interstate fares and in undue prejudice to persons and localities outside the state and to persons traveling in interstate commerce within the state and between points in the state and points in other states; in unreasonable preference to persons and localities in Nebraska; and to persons traveling intrastate in Nebraska; and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination should be removed by making increases in intrastate passenger fares which shall correspond with the increases heretofore made as aforesaid by said respondents in interstate passenger fares.

We further find that the increases made by the carriers in charges for freight services under our decision relating to the western group in Ex Parte 74, and now in effect, result in reasonable charges for interstate transportation within the said group, and that the failure

of respondents within the state of Nebraska correspondingly to increase their intrastate charges for freight services in force on the date of our decision in Ex Parte 74 resulted in the past and will result in the future in undue prejudice to persons and localities outside the state and in unreasonable preference to persons and localities within the state, and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination should be removed by making increases in the intrastate charges for freight services in force on the date of our decision in Ex Parte 74, which shall correspond with the increase heretofore made as aforesaid by respondents in the interstate charges in the western group.

Whether the aforesaid passenger fares or charges for freight services pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

The above findings are abundantly supported by the facts of record. These findings are without prejudice to the right of the authorities of the state of Nebraska or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specific intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, and charges in such a way as to contravene the provisions of the interstate commerce act.

Tariffs giving effect to these findings may be made effective on not less than five days' notice.

An appropriate order will be entered.

EASTMAN, Commissioner, dissents.

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No. 11484.

DICKINSON FUEL COMPANY ET AL.

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted November 18, 1920. Decided January 26, 1921.

Upon complaint praying for an order requiring defendants to refrain from counting box cars used for the transportation of coal as part of the distributive share of cars furnished mines in time of car shortage; *Held*, That no emergency exists, warranting the entry of such an order. Complaint dismissed.

Arthur R. Barry, C. D. Drayton, and Frank S. Bright for complainants.

J. S. Patterson and W. N. King for defendants.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS CLARK, ATTCHISON, AND POTTER.

BY DIVISION 5:

The issues here presented were made the subject of a report proposed by the examiner, to which no exceptions were filed.

The complaint herein, brought by a corporation engaged in the coal business at Milwaukee, Wis., and five operators of coal mines in West Virginia served by the defendant carriers, attacks defendants' car-service rules, under which box cars are charged against the allotment of cars furnished mines in time of car shortage in the same manner as open-top equipment. We are asked to require defendants to refrain from charging box cars supplied to mines equipped with box-car loaders against the distributive shares of those mines.

Prior to September 1, 1917, the Chesapeake & Ohio Railway did not charge box cars against mine allotments. After the publication of our report in *Coal and Oil Investigation*, 31 I. C. C., 193, in which we criticized this practice (see p. 218), the Chesapeake & Ohio promulgated rules which provided that box cars when available would be supplied for coal loading, but that such cars would be charged against mine ratings on the basis of 20 tons per car. On October 10, 1918, the United States Railroad Administration fixed a standard car of 50 tons for the purpose of coal-car distribution and further provided that other cars furnished would

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be charged at the ratios which their capacities bore to the standard car. By order entered April 16, 1920, we recommended that the car-service rules in force at the termination of federal control should be continued in effect, with certain changes not affecting the rule here considered. The present practice of defendants is to charge box cars against mine ratings in the same manner as open-top equipment.

There are approximately 12 mines equipped with the box-car loading devices on the lines of defendants, which were installed at a cost of from \$6,000 to \$8,000 each. Complainants testify that the first box-car loaders were installed at the suggestion of the defendants in order to supply loading for cars which otherwise would have been returned empty to the originating lines.

The cost of loading and unloading coal in box cars is approximately 20 or 25 cents per ton greater than it is in the case of open-top equipment, and more time is also required in loading box cars. For these reasons operators are averse to using box cars when they are charged against the allotment of the mines. The other evidence of record relates mainly to the possible effect of the modification of the car-service rules desired by complainants on the production of coal in West Virginia and need not be discussed here.

Defendants contend that the relief sought by complainants would contravene paragraph (12) of section 1 of the interstate commerce act, reading in part as follows:

It shall also be the duty of every carrier by railroad to make just and reasonable distribution of cars for transportation of coal among the coal mines served by it, whether located upon its line or lines or customarily dependent upon it for car supply. During any period when the supply of cars available for such service does not equal the requirements of such mines it shall be the duty of the carrier to maintain and apply just and reasonable ratings of such mines and to count each and every car furnished to or used by any such mine for transportation of coal against the mine.

Though complainants argue that the statutory provision quoted above should be construed as applying only to open-top coal cars, they urge that, even though this construction be rejected, such an order as they desire would be lawful under paragraph (15) of section 1 of the act, which authorizes us to suspend car-service regulations and take other measures to deal with car shortages.

They call attention to shortage of coal cars on the lines of defendants and other carriers serving the coal fields of West Virginia and adjacent states, which during the past summer imperiled the coal supply for the northwest and led to the promulgation of our service order No. 10 in which we directed defendants and other carriers named therein, effective July 26, 1920, to give preference and priority in the supply of cars for and in the transportation of bituminous coal consigned to the Ore & Coal Exchange, at any Lake

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Erie port for transshipment by water as a part of a pool or pools of lake-cargo or bunkering coal at any such port, with certain restrictions not necessary to refer to here.

It is contended that the same emergency which prompted us to issue that order would warrant us in granting the relief prayed for.

On October 27, 1920, subsequent to the hearing in this proceeding, we indefinitely suspended service order No. 10, as amended, in view of the fact that the conditions at that time warranted and required that action.

We are without authority to grant the prayer of the complaint unless we first find that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists. We are of opinion, and so find, that no such emergency exists at this time. It follows that the complaint must be dismissed. An appropriate order will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1227.
MINIMUM WEIGHT ON GRAIN BASED ON CAPACITY OF
CAR ORDERED.

Submitted December 3, 1920. Decided February 4, 1921.

Proposed cancellation of the application to shipments of grain and grain products of a rule protecting the minimum applicable to car ordered when a carrier for its own convenience supplies a larger car, found not justified. Carriers required to cancel proposed schedules without prejudice to filing tariff provisions in accordance with those found proper.

M. J. Dowlin, L. M. Hogsett, W. B. Plumb, and F. A. Swenson for respondents.

Ed. P. Byars, W. H. Darwin, F. A. Leffingwell, Claude Maer, W. P. Bomar, E. F. Fant, Edwin E. Wyatt, J. A. Simons, jr., O. L. Caywood, and H. B. Dorsey for various protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

By schedules filed to become effective October 26, 1920, respondents propose to cancel, on shipments of grain and grain products between Texas points and between Texas points and Shreveport, La., and group points, the application of the following rule:

When the minimum weight prescribed for an article or a mixture of articles is fixed with relation to the capacity of the car used and the carrier is unable to furnish a car of the capacity ordered by the shipper and for its own convenience supplies a car of greater capacity, the minimum weight prescribed for the car ordered will be applied to the car furnished, provided the actual weight of the shipment is less than 110 per cent of the minimum weight prescribed for the car ordered; but if the actual weight of the shipment is 110 per cent or more than 110 per cent of the minimum prescribed for the car ordered, the minimum weight to be applied will be that which is nearest, but not less than the actual weight of the shipment. The capacity of the car ordered, the number of the order, and the date thereof must be shown on the bill of lading and waybill covering the shipment.

The above rule will not apply when the car ordered is of a capacity not in general service, and for this purpose it will be understood that the box cars in general service are of the following capacities: 40,000; 50,000; 60,000; 70,000 and 80,000 pounds.

Upon protest by the Fort Worth Freight Bureau, of Fort Worth, Tex., the operation of these schedules, in so far as they relate to interstate or foreign traffic, was suspended until March 25, 1921.

During the period of federal control the Director General of Railroads established the marked capacity of cars as the minima on grain and 60,000 pounds as the minimum on grain products. In our special permission No. 50450, of August 21, 1920, we authorized the carriers to continue until January 1, 1921, the marked-capacity minima on grain but reduced the grain-products minimum to 48,000 pounds. The application in the territory above referred to of the rule above quoted enabled shippers to order a car of as low as 40,000-pounds capacity and use a car of much greater capacity upon basis of the minimum applicable to the car ordered or of actual weight of shipment, provided the actual weight was less than 110 per cent of the minimum applicable to the car ordered. This territory differed from a considerable part of the country in that such a rule could be invoked on grain shipments.

The question of reasonable and uniform minima on grain and grain products has been given further consideration by us and in our special permission No. 51215, of December 3, 1920, as amended December 10, 1920, we authorized the continuance of marked-capacity minima on grain of all kinds, except oats and ear corn, snapped corn, or corn in the shuck, with the further exception that if the marked capacity of the car be less than 50,000 pounds the minimum will be 50,000 pounds. On oats and ear corn, snapped corn, or corn in the shuck, in straight or mixed carloads, we authorized a minimum of 80 per cent of the marked capacity of the car, except when marked capacity is less than 50,000 pounds, in which event the minimum will be 40,000 pounds. Our special permission was subject to four notes, the last of which is as follows:

Note 4: When carrier cannot furnish car of capacity ordered by shipper and for its own convenience furnishes a car of greater capacity than the one ordered, such car may be used on the basis of the minimum weight applicable to the car ordered by shipper, but in no case less than actual weight; the capacity of car ordered, number and date of the order to be shown in each instance upon the bill of lading and carrier's waybill.

When actual weight is more than 10 per cent in excess of the marked capacity of the car ordered by shipper, the minimum weight shall be that applicable to the car in general service the capacity of which is next greater than the capacity of the car ordered. When shipper orders a car of marked capacity less than 60,000 pounds and carrier furnishes a car of greater capacity, the minimum weight shall be 60,000 pounds but not greater than the marked capacity of car furnished.

Cars in general service of capacity greater than 60,000 pounds as covered by the preceding paragraph shall be considered to be cars of 70,000, 80,000, and 100,000 pounds capacity respectively.

Except for the last paragraph quoted, which is the amendment of December 10, these regulations were published by respondents, effective January 1, 1921, in supplement No. 19 to agent Fonda's tariff 60 I. C. C.

I. C. C. No. 89. The latter sentence of the second paragraph of note 4 was framed with a view to the necessity for conserving equipment throughout the country and seems justified in view of the comparatively small number of cars of less than 60,000-pounds capacity available for the movement of the grain traffic, especially in the territory here under consideration. So limited, the respondents and carriers elsewhere have little or no objection to the rule.

There is no evidence that the rule sought to be canceled has had any effect on grain products. Prior to January 1, 1921, the grain-products minimum of 48,000 pounds was subject to a note that—

On Grain Products * * *, in straight or mixed carloads, minimum weight will be 48,000 pounds per car, except when marked capacity of car is less, the marked capacity, but not less than 40,000 pounds per car will apply, or when a car of less capacity is loaded to full space capacity, the actual weight will apply.

There are few cars of less capacity than the minimum. In our special permission No. 51215 we authorized a reduction in the grain-products minimum to 40,000 pounds, and with this the protestants herein are satisfied.

In rule 66 of Tariff Circular No. 18-A and in numerous cases we have expressed the opinion that it is the duty of carriers to publish regulations protecting the minimum applicable in connection with the car ordered, subject to reasonable provisions for the protection of the carriers' equipment. There is nothing in the present record which would justify a different conclusion, nor is there any evidence as to any conditions under which the regulations authorized by us and established by the respondents would lead to unfair or unjust charges for the transportation of grain or grain products.

The schedules under suspension propose to cancel entirely the rule protecting the minimum applicable to the car ordered upon grain and grain products.

We find that the proposed cancellation has not been justified in so far as it would affect interstate or foreign traffic and the schedules under suspension to that extent will be ordered canceled. This is without prejudice to the filing by respondents of proper tariff provisions to the effect that the rules governing "minimum weights based on capacity of car ordered" published in item No. 276, or reissues, of agent Leland's tariff I. C. C. No. 1333, or reissues, will not apply on interstate or foreign shipments of grain and grain products covered by the rules effective January 1, 1921, in item 1572-F, supplement No. 19, to agent Fonda's tariff I. C. C. No. 89, or as they may be lawfully amended.

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No. 10413.
VIRGINIA-CAROLINA CHEMICAL COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 9, 1920. Decided January 27, 1921.

Findings in original report, 55 I. C. C., 583, that rates applicable in February and March, 1918, on fertilizer, in carloads, from Mobile, Ala., to points in Louisiana were unreasonable and that complainant is entitled to reparation, affirmed on further hearing.

C. E. Cotterill and *T. A. Bosley* for complainant.

A. M. Bull, John C. Brooke, and John F. Finerty for defendant.

REPORT OF THE COMMISSION ON FURTHER HEARING.

EASTMAN, Commissioner:

In our original report, 55 I. C. C., 583, we found that defendant had not justified increased rates applicable during February and March, 1918, on fertilizer, in carloads, from Mobile, Ala., to certain stations on the Southern Pacific lines in Louisiana; that said rates were unreasonable to the extent that they exceeded \$3.75 per net ton, the rate previously in effect to all of the destinations, and unduly prejudicial to complainant and unduly preferential of shippers at New Orleans, La., to the extent that they exceeded the contemporaneous intrastate rates from New Orleans to the same destinations by more than the contemporaneous rate from Mobile to New Orleans; and that complainant was entitled to reparation on shipments made during the months mentioned on which it had paid the rates found unreasonable. Reasonable and nonprejudicial rates were prescribed for the future. The joint commodity rate of \$3.75 previously in effect was based upon a commodity rate of \$1 from Mobile to New Orleans and a commodity rate of \$2.75 beyond. The combination rates applicable in February and March, 1918, were composed of the rate of \$1 to New Orleans and proportional or basing class-E rates beyond. In effect our finding was that the rates applicable beyond New Orleans, to which the evidence is confined, were unreasonable to the extent that they exceeded \$2.75 per net ton.

Upon petition of defendant the case was reopened for further hearing. As defendant concedes that the finding of undue prejudice was correct and is not concerned with respect to the basis prescribed for

the future, the only issues we have before us are the reasonableness of the rates applicable in February and March, 1918, and whether reparation should be awarded to complainant.

It is conceded that the facts are correctly stated in our original report, except that the distance from New Orleans to Mobile is 139 instead of 179 miles. Defendant relies chiefly upon an exhibit comparing the car-mile earnings on fertilizer under the rates beyond New Orleans here in issue, with the car-mile earnings under the contemporaneous rates on brick, cement, coal, and lime from New Orleans to the same destinations, the earnings in each instance being based upon the respective minimum weights of 30,000 pounds for fertilizer and lime, 40,000 pounds for brick and cement, and 50,000 pounds for coal. The averages of the earnings, in cents, are as follows: fertilizer, 24.41; brick, 35.19; cement, 51.07; coal, 22.06; lime, 17.26. Aside from unsatisfactory hearsay evidence of the value of the commodities compared and general statements as to their loading, there is no comparison of transportation conditions. The exhibit is also defective in that it is based upon minimum weights instead of actual loading. Complainant's 52 carloads of fertilizer averaged over 63,000 pounds, and apparently the other commodities also load in excess of their minimum weights. Upon the information available the exhibit is not enlightening.

In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 58 I. C. C., 610, decided August 12, 1920, and hereinafter referred to as the *Natchez Case*, we prescribed as reasonable maximum rates for application on fertilizer, in carloads, between Natchez, Miss., and all points in western Louisiana, the rates contemporaneously in effect from Shreveport, La., to points in Texas for like distances. We also found that the carload rates on fertilizer between Natchez and points in western Louisiana were and for the future would be unduly prejudicial to Natchez and shippers there located, and unduly preferential of such points in Louisiana, to the extent that they exceeded or might exceed by more than the allowance of 20 miles for river transfer, where there is no river crossing involved between points in Louisiana, the intrastate rates on fertilizer, in carloads, contemporaneously maintained for like distances between such points in Louisiana. The rates thus prescribed were substantially lower for corresponding distances than the rates applicable in February and March, 1918, from New Orleans to the destinations involved herein. The rate of \$3.75 found reasonable in our original report was, as stated, based upon a rate of \$1 to New Orleans and a blanketed rate of \$2.75 beyond. For 196 and 270 miles, the minimum and maximum distances between New Orleans and the destinations in ques-

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tion, the rates prescribed in the *Natches Case* for single-line hauls were \$2.80 and \$3.50, respectively. Between the period in which the shipments moved and the date of our decision in the *Natches Case*, all rates on fertilizer were, on June 25, 1918, increased approximately 25 per cent under general order No. 28 of the Director General of Railroads. In February and March, 1918, the single-line rates under the Shreveport-Texas scale for 196 and 270 miles were \$2.20 and \$2.80, respectively. For the average distance of 233 miles from New Orleans to the destinations the rate prescribed in the *Natches Case* was \$3.30, while the rate under the Shreveport-Texas scale in February and March, 1918, was \$2.60. The distances from Mobile to the destinations range from 335 to 409 miles, and in the *Natches Case* we prescribed single and joint line rates of \$4 for all distances over 300 miles. In February and March, 1918, the single and joint line rates under the Texas-Shreveport scale for distances over 300 miles were \$3.20. Defendant argues that the rate increases under general order No. 28 were the result of the large increases in expenses of transportation in the early part of 1918, particularly the increases in wages under general order No. 27, which were made retroactive to January 1, 1918, and that therefore the 25 per cent increase of June 25, 1918, should be taken into account in determining the reasonableness of rates in February and March, 1918.

As explained in our original report herein, at the time complainant's shipments moved defendant maintained the rate of \$2.75 from New Orleans to Lake Charles, La., and in connection with the increased rates to certain of the destinations intermediate to that point published a note in accordance with rule 77 of Tariff Circular 18-A, which, we have held, was a substantial compliance with the long-and-short-haul rule of section 4 of the act to regulate commerce. Very shortly after the shipments moved defendant reestablished the \$2.75 rate to some of the intermediate points. The most distant destination is only 31 miles more distant than Lake Charles.

Defendant argues that as the rates on fertilizer from New Orleans to the destinations of complainant's shipments were in issue in the *Natches Case*, reparation should be denied under the principle that reparation will not ordinarily be awarded in connection with a general readjustment of rates involving both increases and decreases. That principle is here inapplicable, because complainant did not rely upon our decision in the *Natches Case*, but brought its complaint long prior thereto. Our original report preceded the decision of the *Natches Case*.

Upon the whole record we affirm our previous findings that during the period when the shipments moved the rates assailed were
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unreasonable to the extent that they exceeded \$3.75 per ton; that complainant made the shipments as described, and paid and bore the charges on certain of said shipments at the rates herein found to have been unreasonable; that it has been damaged to the extent that the charges paid exceeded the charges at the rate herein found to have been reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined upon this record, and complainant should therefore comply with rule V of the Rules of Practice.

INVESTIGATION AND SUSPENSION DOCKET No. 1277.
CANCELLATION OF JOINT THROUGH RATES BETWEEN
AUGUSTA, GA., AND AUGUSTA NORTHERN RAILWAY.

Submitted January 31, 1921. Decided February 4, 1921.

Proposed cancellation of joint class and commodity rates between Augusta, Ga., and stations on the Augusta Northern Railway found not justified. Suspended schedules ordered canceled.

No appearance for respondents.

S. S. Ashbaugh for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

By schedules filed to become effective January 10, 1921, the Southern Railway proposes to cancel the joint class and commodity rates between Augusta, Ga., and points on the Augusta Northern Railway, leaving in effect higher combination rates. Upon protest of the Augusta Northern the schedules were suspended until May 10, 1921.

Respondents were not represented at the hearing and the record contains no justification for the proposed cancellation.

We find that the proposed schedules have not been justified and an order will be entered requiring their cancellation.

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No. 11134.

JONES & LAUGHLIN STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ALIQUIPPA &
SOUTHERN RAILROAD COMPANY, ET AL.

Submitted October 19, 1920. Decided January 13, 1921.

1. The Aliquippa & Southern Railroad found to be a common carrier.
2. Rates to and from the plants of complainant and intervener at Woodlawn and West Economy, Pa., found to have been and to be unreasonable and unduly prejudicial. Reparation awarded.

Borders, Walter & Burchmore and Wm. W. Collin, jr., for complainant, intervener, and Aliquippa & Southern Railroad Company.

John J. Heard and Reed, Smith, Shaw & Beal for defendants other than the Aliquippa & Southern Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, *Commissioner*:

This proceeding was made the subject of a proposed report. Exceptions were filed by the defendants and oral argument was had.

The complainant, a corporation, has a plant for the manufacture of various iron and steel products at Woodlawn, Pa., a point on the Pittsburgh & Lake Erie Railroad about 19 miles northwest of Pittsburgh, Pa. The intervener, whose petition was filed at the hearing, is a corporation operating a sand plant near West Economy, Pa., also on the Pittsburgh & Lake Erie about 1.8 miles south of Woodlawn. The complainant's plant occupies a strip of land about 3 miles long and tapering in width from about 1,500 or 2,000 feet at the north end to about 200 or 300 feet at the south end, located between the Pittsburgh & Lake Erie tracks and the bank of the Ohio River. The intervener's plant is also located on the bank of the Ohio River near the south end of the complainant's plant. The two plants are directly served only by a short line known as the Aliquippa & Southern Railroad, which connects with the Pittsburgh & Lake Erie at Aliquippa, Pa., about 1.2 miles north of Woodlawn, and at West Economy.

Since August 9, 1918, on intrastate traffic, and February 1, 1919, on interstate traffic, in connection with shipments to or from points beyond its line, the Aliquippa & Southern has published a carload
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rate of 10 cents per ton, net or gross according to the basis applicable to the same shipment under the trunk lines tariffs, between points on its line and its junctions with the Pittsburgh & Lake Erie. Prior to those dates the Aliquippa & Southern did not publish a specific charge on interchange traffic. Its tariffs merely stated that it performed switching for the Pittsburgh & Lake Erie on the basis of actual cost but not in excess of \$2 per car. Since the dates mentioned, on all traffic handled by the Pittsburgh & Lake Erie in connection with the Aliquippa & Southern, the former has absorbed out of the line-haul rates to or from Woodlawn, 4.33 cents per ton of the latter's charges except that on ore, slag, ashes, and refuse to be wasted, and in connection with movements by the Pittsburgh & Lake Erie at switching rates or at rates of 20 cents per ton or less, none of the Aliquippa & Southern's charges are absorbed. The absorption is made upon the so-called plant-facility basis. As a result of the failure of the Pittsburgh & Lake Erie to absorb the entire amount of the Aliquippa & Southern's charges, shippers and receivers served by that line have to pay 5.67 cents per ton in addition to the line-haul rates to and from Woodlawn in certain instances and 10 cents additional in others.

The complaint filed January 3, 1920, and the petition of intervention, allege that the rates charged on shipments to and from complainant's and intervener's plants are unreasonable and unduly prejudicial to the extent that they exceed the line-haul rates contemporaneously in effect to and from Woodlawn. Reparation is sought on shipments moving intrastate from August 9, 1918, to the termination of federal control, and interstate, since February 1, 1919; and the establishment of reasonable and nonprejudicial rates for the future.

The Aliquippa & Southern, which is named as a party defendant, admits that it is a common carrier and states that it has at all times been willing to participate in joint rates or other arrangements whereby the rates to and from points on its line shall not exceed the line-haul rates to and from Woodlawn. The defendants other than the Aliquippa & Southern deny that it is a common carrier and insist, on the contrary, that it is complainant's plant facility.

The Aliquippa & Southern was organized in 1906; has a capital stock of \$150,000, all of which has been issued and is owned by the complainant except 11 directors' qualifying shares; has no bonds or equipment obligations, but at the end of 1919 owed the complainant \$1,509,470.80, on which it paid interest of \$80,905.20; was found to be a common carrier by the Public Service Commission of Pennsylvania in May, 1920; complies with federal and state requirements applicable to common carriers; maintains an organization of over

800 employees which is entirely separate from that of the complainant except that the vice president and the treasurer are also officers of the complainant; owns its track equipment and buildings and a portion of its right of way; assesses tariff charges on traffic handled, including demurrage in accordance with the national car demurrage rules; issues no bills of lading and carries no passengers, mail, or express; and does not belong to the American Railway Association, but is a member of the Master Car Builders' Association. The last annual report, for the year 1919, shows a total investment in road and equipment of \$1,592,113.99, a net income of \$60,409.93, a net loss for the year of \$159,900.18, due principally to large charges to amortization, and a total corporate deficit of \$160,275.61.

The right of way of the Aliquippa & Southern extends completely around the plant of the complainant and also extends north thereof along the line of the Pittsburgh & Lake Erie, the principal interchange yard with the latter road being located on this portion. The right of way on which this yard is located is owned by the Aliquippa & Southern in fee and the remainder is owned by the complainant and used by the Aliquippa & Southern under an arrangement, the exact details of which are not given. It was stated, however, that the Aliquippa & Southern has paid a total of \$80,000 for the fee in the right of way which it owns and for the use of the right of way owned by complainant. This road is approximately 7.6 miles long; its trackage consists of 13.5 miles of first and second main track, 12.6 miles of yard track and sidings, all standard gauge, and it also operates 33.3 miles of standard-gauge industrial sidings owned by the complainant. In addition to these tracks the complainant maintains a system of standard-gauge plant tracks which it operates with its own power. Certain of the tracks of the Aliquippa & Southern are located off of its right of way on the complainant's property and in some instances the industrial sidings of the complainant extend on to the right of way of the Aliquippa & Southern. Its equipment consists of 12 locomotives, 383 freight cars, 1 wrecking crane, and 5 work cars. The cars of the Aliquippa & Southern are occasionally permitted to go off its line, but are not habitually interchanged with its connections.

The principal industry served by the Aliquippa & Southern is that of the complainant, but it also serves the Woodlawn Land Company, a subsidiary of the complainant; the Woodlawn & Southern Street Railway Company, owned by the complainant; P. Moore, an independent dealer in coal and builders' supplies, whose plant is located on complainant's property; the Nufer Cedar Company and Edwin Bell & Company, independent companies manufacturing cedar boxes and nail kegs and barrels, respectively, whose plants are located on complainant's property and whose product is largely consumed by the complainant; and the intervener, an independent concern whose

plant is located on the right of way of the Aliquippa & Southern. This road also has two team tracks, one of which is owned by it and one by the complainant, which are accessible to the general public by means of a public road which passes through the complainant's plant property from Woodlawn to its southern extremity. These tracks have been used to a certain extent by the borough of Woodlawn for unloading road material, but complainant explained that there was no considerable use thereof for the reason that the Pittsburgh & Lake Erie maintains team tracks at Woodlawn to and from which the Woodlawn line-haul rates apply, whereas the use of the Aliquippa & Southern team tracks entails a charge in addition to the line-haul rates.

The service of the Aliquippa & Southern consists, generally speaking, of the movement of freight, except ore, to and from its interchange yard with the Pittsburgh & Lake Erie from and to points of loading or unloading to the various industries which it serves. Ore is taken by the Aliquippa & Southern from the interchange yard only to a subyard within the complainant's plant, from which point it is switched to the points of actual unloading, by complainant's power. The Aliquippa & Southern also has a considerable volume of local traffic, including intermill service for the complainant, for which it makes a charge of 20 cents per ton. It performs no intramill service for the complainant. Neither complainant's plant nor the tracks of the Aliquippa & Southern are inclosed by fences, but certain operations within the complainant's plant are fenced, and there is a fence dividing the right of way of the Aliquippa & Southern from the adjoining right of way of the Pittsburgh & Lake Erie.

The following is a statement of revenue freight handled by the Aliquippa & Southern during the year ended December 31, 1919:

	Interchanged with P. & L. E. R. R.		Local.		Total.	
	Cars.	Tons.	Cars.	Tons.	Cars.	Tons.
Jones & Laughlin Steel Co.	63,271	2,860,441	38,401	1,662,506	101,672	4,522,947
Aliquippa & Southern R. R.	42	1,103	.....	.....	42	1,103
Woodlawn & Southern St. Ry. Co. ...	12	543	7	165	19	708
Rodgers Sand Co.	671	30,822	420	20,208	1,091	51,035
P. M. Moore.	66	3,358	41	2,817	107	6,175
Nufer Cedar Co.	204	4,905	1	10	205	4,915
Edwin Bell Co.	150	3,709	.....	.....	150	3,709
Woodlawn Borough.	39	2,096	2	80	41	2,176
Woodlawn Land Co. ....	.....	.....	2	105	2	105
Total.	64,455	2,966,977	38,874	1,685,886	103,329	4,652,863

Effective September 20, 1912, the Pittsburgh & Lake Erie published a provision for the absorption of the actual cost to the Aliquippa & Southern of the handling of empty and loaded cars to

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and from points of placement within the complainant's plant. On January 20, 1913, this provision was amended to provide for the absorption of actual cost with a maximum of \$2 per car. On April 1, 1914, following the decision of the Commission in the *Industrial Railways Case*, 29 I. C. C., 212, the absorption was discontinued. Effective May 8, 1916, the Pittsburgh & Lake Erie provided for the absorption of the charges of the Aliquippa & Southern to the extent of 4.33 cents per ton on all carload revenue freight except traffic only switched by the Pittsburgh & Lake Erie, traffic upon which the Pittsburgh & Lake Erie's rate was 20 cents per ton or less, and slag, ashes, and refuse to be wasted; and this arrangement has continued up to the present time except that, effective May 23, 1917, following the decisions of the Commission in the *Iron Ore Rate Cases*, 41 I. C. C., 181, and 44 I. C. C., 368, the allowance on ore was discontinued.

The allowance of 4.33 cents per ton was made as the result of a recommendation of a committee of carriers' accounting officers whose activities in connection with allowances to industrial railroads have been described in a number of previous reports and need not be further discussed here, based on their classification of the Aliquippa & Southern as a plant facility. They also computed the allowance to which the Aliquippa & Southern would have been entitled had it been a common carrier, which was 6.97 cents per ton. Both these figures were computed upon operations for the year ended June 30, 1915. The complainant calls attention to the fact that, based upon the same tests and standards as used in connection with the Aliquippa & Southern, the committee above referred to classified the Fairport, Painesville & Eastern Railroad, the Delray Connecting Railroad, and the Pittsburgh, Allegheny & McKees Rocks Railroad as plant facilities, and that we have since found each of these roads to be a common carrier.

Woodlawn takes the flat Pittsburgh rates for long hauls, slightly higher than the Pittsburgh rates on short-haul traffic to the south and slightly less than the Pittsburgh rates on short-haul traffic to the north; and in general the Woodlawn rates are relatively aligned with rates to and from other iron and steel producing districts such as the Mahoning and Shenango valleys and others included within a radius of 75 miles of Pittsburgh. Reference was made by the complainant to a number of iron and steel plants in this territory, in direct competition with its Woodlawn plant, whose switching and spotting, except in the case of ore, is done either by the trunk lines themselves or by terminal lines, without charge in addition to the line-haul rates, the service being generally the same as that rendered at complainant's plant by the Aliquippa & Southern.

Ore shipments to these competing plants are switched to points within the plants without charge in addition to the line-haul rates but the spotting is either performed by the industry without an allowance therefor or by the trunk lines at an additional charge. Defendants urge that the service performed by the Aliquippa & Southern on shipments of ore is in fact a spotting service and one for which complainant should be compelled to pay. It is contended for the complainant that the service covered by the line-haul rates of switching ore into these competing plants, but not to the point of unloading, is the equivalent of that performed by the Aliquippa & Southern in switching ore into the complainant's plant, for which it receives no allowance. Assuming the Aliquippa & Southern to be a common carrier, the delivery by the Pittsburgh & Lake Erie at its interchange with the Aliquippa & Southern does not constitute a delivery to the complainant or a completed service at line-haul rates.

The intervener, Rodgers Sand Company, testified that it was in competition with numerous sand plants in this territory served by the Pittsburgh & Lake Erie and other roads, whose switching was performed without charge in addition to the line-haul rates. It was testified by the complainant and the intervener that, irrespective of how their shipments were bought or sold, they always paid and bore the freight charges of the Aliquippa & Southern or such portion thereof as was not absorbed by the Pittsburgh & Lake Erie.

The defendants' principal contention is that the facts adduced are not adequate to support a finding that the Aliquippa & Southern is a common carrier; that the railroad was constructed simultaneously with the plant of complainant or immediately prior thereto; that it was absolutely essential to the operation of the plant and was designed and built solely with the view to serving the plant without regard for the public; that the enterprises along the line apparently are tenants at will of complainant and were located there for convenience in serving complainant's plant; that of the two team tracks one is on the land and tracks of complainant, and the other, though accessible to the public, is practically never used; that from its location there can never be any permanent industrial development along the line and that the public will never be particularly interested in the rates of the Aliquippa & Southern or whether or not it is a common carrier. Defendants introduced some general testimony to the effect that the expense to the Pittsburgh & Lake Erie of interchanging traffic with the Aliquippa & Southern was greater than with another trunk line, and named certain iron and steel plants in Pennsylvania and Ohio that performed their own spotting without compensation from the trunk lines.

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The Aliquippa & Southern actually serves independent industries located on its line, and facilities are provided for serving the public generally, and to some extent such facilities are used by the public.

The Pittsburgh & Lake Erie concedes that the road-haul charges to and from Woodlawn would include compensation for switching and spotting, except on ore, to the industries located on the Aliquippa & Southern, if that service were performed by it. At the hearing that road conceded that a switching and spotting allowance to a common-carrier industrial line properly should be greater than an allowance to a plant-facility industrial line. It apparently did not question the propriety of the present allowance to the Aliquippa & Southern, but insisted that because of its character that road was not entitled to any greater amount. On brief, however, it is contended in substance that the Pittsburgh & Lake Erie is entitled to elect whether it will perform switching for industries served by the Aliquippa & Southern or make use of the services of that road; that the Pittsburgh & Lake Erie is willing to perform the service itself if it is permitted to do so without undue interference, and, therefore, that it is not obligated to make any allowance to the Aliquippa & Southern. In view of the conclusion hereinafter reached regarding the status of the Aliquippa & Southern, however, it can not be held, in the absence of the assent of that road, that it is optional with the Pittsburgh & Lake Erie to perform this service or have it done by the Aliquippa & Southern.

With respect to rates on slag, ashes, and refuse for wasting, and movements in connection with the Pittsburgh & Lake Erie at switching rates or at rates of 20 cents per ton or less, we are not satisfied that rates the same as from and to Woodlawn should be required.

From the record it appears that demurrage is assessed by the Aliquippa & Southern, but, so far as is disclosed, this line pays no per diem or other compensation for the use of cars to the Pittsburgh & Lake Erie. It has, however, attempted to become a party to the uniform per diem code, but so far unsuccessfully. As was pointed out in *Northampton & Bath R. R. Co. Case*, 41 I. C. C., 68, 74, undue preference of the shipper who happens to own an industrial road can not be sanctioned in any guise. The arrangements between industrial roads and connecting trunk lines respecting demurrage, car detention, car interchange, and reclaims are of fundamental importance. Our finding in this case is not to be taken as an approval of existing practices with respect to these subjects.

From a consideration of the whole record, we are of the opinion and find that the Aliquippa & Southern was and is a common carrier and that as such it may lawfully participate in joint rates with other common carriers or have its charges absorbed under proper tariff
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provision by the roads having the line haul; that the rates in effect intrastate from August 9, 1918, to February 29, 1920, inclusive, and interstate on and after February 1, 1919, on all traffic, except ore and except slag, ashes, and refuse for wasting, or movements in connection with the Pittsburgh & Lake Erie at switching rates or at rates of 20 cents per ton or less, moving to or from points of loading or unloading at the plants of the complainant and the intervener, were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded or may exceed the rates contemporaneously in effect on like traffic to or from Woodlawn; that rates on ore moving to the point in complainant's plant at which it is customarily turned over to the complainant for movement to the unloading points, were, are, and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded or may exceed the rates contemporaneously in effect on like traffic to Woodlawn; that between August 9, 1918, and the date of the hearing of this case the complainant and intervener made intrastate shipments, and between February 1, 1919, and the date of the hearing, the complainant and intervener made interstate shipments to and from their plants and paid and bore thereon either the total freight charges or the amounts by which the total charges exceeded those to or from Woodlawn; that they have been damaged to the extent the charges paid by them exceeded those they would have paid had the rates herein found reasonable been in effect; and that they are entitled to an award of reparation, with interest. The amount of reparation due can not be determined upon this record, and complainant and intervener should comply with rule V of the Rules of Practice. We are without power to order refund of war taxes.

The Aliquippa & Southern presented some figures purporting to show that its cost for interchange switching on a common-carrier basis is 9.4 cents per ton. We are not specifically asked to prescribe divisions or to fix the amount of an allowance to the Aliquippa & Southern and we therefore make no finding in that respect. To the extent, if any, that the charges collected by the Aliquippa & Southern exceeded those that would have accrued to it on the basis of fair and reasonable allowances or divisions of joint rates it will be required to join in the payment of reparation.

An order respecting rates for the future will be entered.

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INVESTIGATION AND SUSPENSION DOCKET No. 1237.

TRANSIT RULES AND REGULATIONS ON FRESH APPLES.

Submitted January 20, 1921. Decided February 9, 1921.

Proposed cancellation of storage-in-transit arrangement on apples, in carloads, destined to the Atlantic seaboard found not justified. Suspended schedules ordered canceled.

William L. Kinter and *D. Lynch Younger* for respondents.

Fayette B. Dow and *Willis Crane* for Joint Council, International Apple Shippers Association, National League of Commission Merchants of the United States, and Western Fruit Jobbers Association of America.

C. R. Marshall and *Charles E. Bell* for American Fruit & Vegetable Shippers Association and Hood River Apple Growers Association.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

By schedules filed to become effective November 18 and December 10, 1920, respondents propose to cancel their charge for storage in transit at intermediate points on the lines of the Philadelphia & Reading, the Central of New Jersey, and the Norfolk & Western, of carload shipments of apples "moving in the direction of the Atlantic Seaboard" via regularly established routes. The charges now applicable on shipments stored in transit at intermediate points are based on the through rates from points of origin to final destination plus a storing in transit charge of 7 cents per 100 pounds. Cancellation of the storage charge would result in the application of combination rates to and from the storage points which are higher. Upon protest of the Joint Council, International Apple Shippers Association, National League of Commission Merchants of the United States, and Western Fruit Jobbers Association of America, the schedules were suspended until March 16, 1921.

The arrangement which respondents seek to cancel is part of the general system of storage in transit in effect on apples in official and western classification territories. The transit provision under suspension was first made effective as a food conservation measure.

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Similar services had been accorded for a number of years by lines in western classification territory to and including Chicago, and by the Erie and New York Central in trunk line territory. Since its issuance, the tariff here in question has borne on its title-page the following statement indicative of its purpose:

This tariff is issued for the purpose of conserving the food resources of the United States as a war measure, and at request of the United States Food Administration.

The arrangement in question is restricted to apples in boxes, barrels, or crates, moving outbound within one year from the date of freight bill on the inbound movement. The average revenue per car under the 7-cent charge is about \$30.

Among the warehouses which may be used for the storage of apples under provisions of the suspended schedules are those located at Reading, Pottstown, Linfield, Allentown, and Bethlehem, Pa., on the Philadelphia & Reading; at Scranton and Allentown, Pa., on the Central Railroad of New Jersey; and at Lynchburg, Roanoke, and Bluefield, Va., on the Norfolk & Western.

No evidence was offered by respondents bearing upon the reasonableness of the combination rates which would result from the proposed cancellation, or to show that the charge of 7 cents is not a reasonable maximum charge for the service in question. It is respondents' position generally that the reasons for the establishment of the arrangement in question have ceased to exist, that no use was made of it on their lines in 1918 and 1919, and that similar arrangements are not accorded to other commodities.

Respondent Philadelphia & Reading urges that it has been its practice uniformly to decline to accord transit services to shippers, including those engaged in marketing butter and eggs, from whom such requests have been received; that the transit service on apples is the only one of its kind in effect from the west on their lines, which if continued may in the future form the basis of requests from other shippers for similar services; that the shippers of apples should rightfully pay the combination rates in and out of storage points; and that they are apprehensive lest the provisions relating to the storage of apples may result in the further extension of transit services on that commodity which they are ill adapted to render on traffic from the west destined for ultimate consumption in the east, by virtue of their geographical location and the expense attendant upon back hauls which might result from same.

Respondent Central Railroad of New Jersey urges further that its line is short and serves but few storage warehouses, and can be used in any event only to a limited extent. It refers also to the fact that it is not equipped with refrigerator lighter equipment in New York

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harbor, with which to transfer perishables intended for export from the Jersey side to New York during periods of inclement weather.

Respondent Norfolk & Western urges that its participation in the tariff is of little practical consequence, owing to the fact that the destination territory is restricted to points south of the Potomac River, with the exception of Washington, D. C., including the Virginia cities and Carolina territory; and that it fears that the continuation of the present transit arrangement on western apples may result in requests for transit on Virginia apples, cabbage, and canned goods produced on its line.

Protestants direct attention to the fact that each of the respondents permits transit on certain specified commodities handled over its lines. They contend that transit services in general and those involved in this case in particular are essential to the proper marketing of the western box apple. They urge that the production of box apples in the West is a highly specialized commercial industry of comparatively recent origin; that the production of apples in Colorado, Utah, Idaho, Montana, Washington, Oregon, and California increased from 8,700,000 boxes in 1911 to 13,800,000 boxes in 1915, and 35,175,000 boxes in 1919; that in five years there will be an enormous increase in the annual production of box apples; that approximately 65 per cent of this production moves to points east of the Mississippi River; and that the storage facilities in the centers of consumption are inadequate to care for the peak of the apple movement and will be correspondingly more so as production increases. They assert that on December 1, 1916, there were 1,041,000 boxes of apples in storage in official classification territory, as compared with 2,705,000 boxes on December 1, 1919, and that the storage at intermediate points is increasing substantially year by year, in support of which they show that in 1919, excluding New York, Boston, Philadelphia, and Chicago, 1,325,000 boxes were stored in official classification territory as compared with 369,000 boxes in 1916. Upon basis of these and other corroborative statistics, they urge that transit should be continued at intermediate points where warehouses are available, congestion is infrequent, and prompt release of equipment is possible, in order to care for the needs of distribution incident to the constantly increasing production of apples.

Protestants contend that as the apple crop is produced at considerable distance from the consuming centers during the fall period of about two and one-half months, it must be moved to convenient storage points for intelligent distribution over the 10 months' period of consumption; that the bulk of the movement east should occur before December 1 owing to the difficulties of transportation, inadequacy of heater equipment, and liability of the fruit to damage in

transit after that date; and that the use of the transit privilege facilitates the marketing of apples, as it is not feasible to distribute them all directly to ultimate consuming points.

It is the claim of protestants that the margin of profit which accrues to the producer of apples is, generally speaking, small; that the abolition of all storage services on apples would be disastrous to the industry; that while during abnormal periods of great prosperity, when rising prices prevail, as in 1918 and 1919, increased charges on perishables can be passed on to the consumer, the situation is reversed in a declining market, which it is contended will shortly develop in the case of apples in the same manner that it has already developed in the case of other commodities; accordingly, they assert that the apple industry cannot stand the further increases in freight rates, which would result from the cancellation of transit provisions. They introduced cost figures which tended to sustain this assertion.

Protestants argue that the future should not be judged by the abnormal years of 1918 and 1919, when the demand for apples by British and American consumers greatly exceeded the production; that while the use of the transit service on lines of the respondents was not considerable during those years, that fact is not conclusive of its future possibilities.

In answer to respondents' contention that the transit arrangement was not used on their lines in 1918 and 1919, protestants refer to 16 shipments stored in transit at Linfield and which subsequently moved from Linfield to Philadelphia, and on which charges were based on the through rate from point of origin to Philadelphia plus the transit charge. Respondents urge that these shipments did not move to ultimate destination via a regularly established route and that charges should have been based on the combination of rates to and from Linfield.

As hereinbefore stated, the transit arrangement in question is part of a general arrangement for the storage of apples in transit which has been in effect for a number of years, and while the same arrangement is in effect on the various other trunk lines operating in the same territory, respondents are the only ones seeking to withdraw it.

We find that the proposed schedules have not been justified, and an order will be entered requiring their cancellation and discontinuing this proceeding.

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No. 11894.

INDIANA RATES, FARES, AND CHARGES.
IN THE MATTER OF RATES, FARES, AND CHARGES
APPLICABLE BETWEEN POINTS IN THE STATE OF
INDIANA.

Submitted December 15, 1920. Decided January 28, 1921.

1. Rates, fares, and charges fixed by the Public Utilities Commission of Indiana for intrastate application in Indiana, except rates on coal for distances of 30 miles and less, found to subject persons and localities outside the state to undue prejudice and disadvantage and to result in unjust discrimination against interstate commerce.
2. Fares and charges prescribed which will remove such prejudice and discrimination.

John C. Bills, W. S. Bronson, N. S. Brown, John B. Cockrum, D. P. Connell, Homer T. Dick, R. V. Fletcher, C. C. Hine, W. F. Peters, Henry S. Starr, James Stillwell, Morison R. Waite, John B. Wellman, and D. P. Williams for steam carriers.

Ele Stansbury, U. S. Lesh, and A. B. Cronk for Public Utilities Commission of Indiana.

R. B. Coapstick for Indiana State Chamber of Commerce; *R. B. Coapstick, A. D. Ogborn, George M. Barnard, Phil O'Neill, and J. A. Van Osdol* for Indiana gas belt interests and others; *O. P. Gothlin* for Indiana Log Shippers' Association; *C. R. Hillyer* for Western Brick Company and Danville Brick Company; *Isaac Born and Charles P. Stewart* for various interests; *John C. Graham* for Jackson Chamber of Commerce; *M. J. Parlin* for Belknap Hardware & Manufacturing Company; *A. F. Vandegrift and R. L. Callahan* for Louisville Board of Trade; *H. Edward Richter* for Richter Grain Company; *F. M. Renshaw* for Cincinnati Chamber of Commerce and Cincinnati Live Stock Exchange; *E. L. German* for Louisville Live Stock Exchange and Bourbon Stock Yards; and *C. M. Bullitt* for Henderson Elevator Company.

John E. Benton for National Association of Railroad and Public Utilities Commissioners.

REPORT OF THE COMMISSION.

MEYER, Commissioner:

On October 16, 1920, we received a petition from the steam carriers operating in the state of Indiana, stating that they had ap-

plied to the Public Utilities Commission of Indiana for the same general increases in rates, fares, and charges on intrastate traffic in Indiana as we had permitted for the interstate traffic of the same carriers in *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to as *Ex Parte 74*, but that the Indiana commission had allowed such increases only in part. It was alleged that as a result of the action of the state commission an unlawful relationship as between the intrastate and interstate transportation charges would exist and we accordingly instituted this proceeding of investigation.

In *Ex Parte 74*, under authority conferred upon us by the interstate commerce act, we divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific, which groups, in our view, represented a proper division of the country for the purpose of considering the financial condition of the carriers and fixing upon a general increase in rates. We found that for all freight services the carriers might increase their charges by varying percentages according to the several groups. In the eastern group, which includes Indiana, an increase of 40 per cent was authorized. For passenger service, including the transportation of excess baggage and milk and cream carried on passenger trains, we authorized a uniform increase of 20 per cent in fares and charges throughout the country, and authorized a surcharge upon passengers in sleeping and parlor cars equal to 50 per cent of the charge for space in such cars, to accrue to the rail carriers. It was our conclusion that these increases would result in transportation charges—

not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

In reaching this conclusion we anticipated that the various state authorities would grant corresponding increases, as most of them have since done. Tariffs were filed establishing the new rates, interstate, effective August 26, 1920.

The decision of the Indiana commission was rendered September 17, 1920. A short time previous, in a similar proceeding before the Illinois Public Utilities Commission, wherein the carriers sought the same increases intrastate in Illinois as we had allowed interstate in the eastern group in *Ex Parte 74*, the Illinois commission had decided that within Illinois there should be no increases in passenger fares

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or in milk and cream rates, and no surcharge on passengers in sleeping or parlor cars, and that an increase of only 33½ per cent should be made in the charges for freight services. It should also be said, in this connection, that, subject to a few exceptions, the Illinois commission has during recent years refused to allow the same general increases in rates as has this Commission while the Indiana commission has granted them, so that, upon the whole, the rates in Illinois had for some years been lower than applied intrastate in Indiana, and interstate between Indiana and Illinois and elsewhere in so-called central territory. Recently, however, following an order of the Illinois commission, the class rates in Illinois were revised so as to represent what is said to be practically the equivalent of the central territory scale of August 25, 1920, plus 35 per cent. The Indiana commission in its report indicated that its action was governed almost entirely by the action of the Illinois commission, and accordingly denied the increases sought. As to passenger fares it permitted no increases whatever, and refused to authorize a surcharge on passengers in sleeping and parlor cars. This had the effect of holding the intrastate fares to the general basis of 3 cents per mile, as in Illinois. Charges for excess baggage are usually based upon a percentage of the current passenger fares, and the Indiana commission permitted no increases therein. Also, no increases were allowed in rates on milk and cream in passenger trains. As to freight traffic, the Indiana commission granted an increase of 83½ per cent in class rates and in charges for special services such as reconsignment, diversion, switching, etc., and an increase of 83½ per cent in the rates on coal, except that it was provided that the rates on coal for distances of less than 30 miles should not exceed certain maxima, and that certain differentials as to destination points should be observed. An increase of 16 per cent was allowed in the rates on iron and steel articles and live stock, and 10 per cent in the rates on other commodities, with the exception of brick, as to which no increase was allowed, and as to straw, for which a new mileage scale of rates was prescribed about 15 per cent lower than the interstate scale on the same commodity. As we understand it, the Indiana commission, in order to protect the Indiana shippers, sought by its decision to hold the rates in Indiana in a general way to the level of those in Illinois. A supplemental report of the Illinois commission on the recent application of the carriers modified the original report, in that it granted what was deemed to be the equivalent of a 35 per cent increase in Illinois intrastate freight rates and charges.

The electric lines offered no evidence, are seeking no increases at our hands, and the word "carriers" as herein used means only steam carriers.

The present standard passenger fares in Indiana are on the general basis of 3 cents per mile, this rate having been established by the Director General of Railroads June 10, 1918. Prior to that time the basis was 2 cents per mile, in accordance with an act of the state legislature, which was repealed March 13, 1919. The interstate fares of the respondent carriers are generally on the basis of 3.6 cents per mile. The excess-baggage charges are based on 16½ per cent of the passenger fares and are accordingly lower intrastate than interstate. No surcharge is imposed upon intrastate passengers in sleeping or parlor cars.

The record establishes that the general level of charges for freight services also is lower in Indiana than that applied interstate. Prior to August 26 the charges for freight services intrastate in Indiana were in practically all cases on the same basis as applied interstate in the same general territory. In the *C. F. A. Class Scale Case*, 45 I. C. C., 254, we prescribed a scale of class rates for general application in what is known as central territory, which, roughly speaking, embraces the territory bounded by a line through Buffalo and Pittsburgh on the east, the Ohio River on the south, the Mississippi River on the west, and the great lakes on the north. This scale, subject to the general percentage increases made since its adoption in 1917, applies both intrastate and interstate through most of this territory, except intrastate in Illinois and Indiana, and until August 26, applied intrastate in Indiana. Many of the commodity rates, intrastate and interstate, in central territory are made on a percentage of the class rates, and many of them have been fixed by us. See *C. F. A. Class Scale Case, supra*, and *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84. We have also fixed the bases for interstate rates on straw, live stock, and milk and cream in central territory. *Straw Rates from St. Louis to Anderson, Ind.*, 36 I. C. C., 30, *Eastern Live Stock Case*, 36 I. C. C., 675, and *C. F. A. Territory Milk and Cream Rates*, 46 I. C. C., 601, respectively, which bases until August 26 were applied also intrastate in Indiana.

The carriers are interested mainly in the revenue feature of the case. They estimate that on a year's business the rates, fares, and charges required by the Indiana commission would result in about \$5,500,000 less than if the increases sought were applied. Of that amount, about \$3,500,000 is charged to the failure to receive a 40 per cent increase in freight rates, and about \$2,000,000 of this latter amount represents estimated losses on the coal traffic.

From Indiana coal mines, which are in the southwestern part of the state, near the Indiana-Illinois state line, to many destinations in Indiana some of the routes are interstate while others are intra-

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state. Prior to August 26 the rates on coal were usually the same, regardless of the route, but now the intrastate routes are compelled to maintain the lower rates fixed by the Indiana commission. The result is that a heavy tonnage that formerly moved via the interstate routes has been diverted to the intrastate routes, to the prejudice of the former.

The record shows that interstate passenger traffic and interstate fares and surcharges are being broken down or defeated by passengers buying tickets to points in Indiana near the state line, leaving the train, purchasing new tickets, and then resuming their journey on the same train to final destination. This practice and its discriminatory effects are fully described in *Intrastate Rates within Illinois*, 59 I. C. C., 350, *Ohio Rates, Fares, and Charges*, 60 I. C. C., 78, and related cases recently decided. Other forms of discrimination referred to in those cases are also disclosed by this record. Intrastate and interstate passengers ride on practically all trains, and the service and accommodations afforded both classes of traffic in general are alike. There is evidence of record that it costs more to perform intrastate than interstate passenger service.

Industries and commercial houses at such points as Detroit, Mich., Dayton and Cincinnati, Ohio, Louisville, Ky., Chicago, Ill., and other points beyond the borders of the state of Indiana are in competition with Indiana concerns in doing business in Indiana. As already indicated, the rates, fares, and charges applicable to the intrastate commerce of the Indiana interests have borne less substantial increases, and for that reason are in general relatively lower than the interstate rates, fares, and charges applied to the commerce of their competitors whose places of business are outside the state. The record establishes that disparities in transportation charges in favor of Indiana interests are general, and that they operate in various ways to the detriment of those who ship or travel to or from the state. The evidence of jobbing interests, brick manufacturers, and dealers in grain and live stock located beyond the borders of the state is particularly convincing. The instances specifically cited of record are typical of the general situation. It is unnecessary to go into all this evidence in detail.

In 1911 the Illinois and Indiana brick manufacturers were given an adjustment of intrastate and interstate commodity rates that was fairly satisfactory to the parties concerned. The general basis for this structure has not been changed, but the rates themselves have become badly aligned because, as we understand it, the interstate rates during recent years have been increased 5 and 15 per cent, 2 cents per 100 pounds, and 40 per cent, while the Illinois intrastate rates have generally been increased only 2 cents per 100 pounds and 40 per cent.

35 per cent, and the Indiana intrastate rates only 5 and 15¹ per cent and 2 cents per 100 pounds. The Illinois producers insist that the Indiana intrastate rates be promptly increased 40 per cent, but the Indiana producers strongly oppose any increases in their intrastate rates so long as the Illinois intrastate rates are not given the same increases as have been made in the interstate rates. The present adjustment is injurious to various parties. For instance, Chicago, the greatest market, which could formerly be reached by all the manufacturers on a substantial rate parity, is now closer, so to speak, to the Illinois producers, and the Indiana producers are at a substantial disadvantage. Apparently to retaliate for the action of the Illinois commission in affording the Illinois producers an advantage in the Chicago market, the Indiana commission allowed no increases in the rates from Indiana producing points to Indianapolis and other large Indiana markets, thus giving the Indiana producers an advantage over the Illinois producers, who must ship across the state line to reach the Indiana markets. The outcome is that interstate traffic is being seriously interfered with.

The brick interests represented at the hearing—and as we understand it they are the ones most vitally concerned with the differences between the interstate rates and the Illinois and Indiana intrastate rates—stated that, pending our decision in the general brick case, Docket No. 10733, they would be willing to accept rates interstate between Indiana and Illinois and intrastate within Indiana and within Illinois made on the basis of the rates in effect in 1911, plus the 5 and 15 per cent, the 2-cent, and the 40 per cent increases. It is impossible in this proceeding to make any valid order regarding the Illinois intrastate rates, but the fact that we have required the 40 per cent increase in the Illinois intrastate rates in effect August 25, 1920, will relieve the situation to some extent. A further increase in the Illinois intrastate rates may be necessary, but that matter must be left for treatment in another proceeding. No good reason appears why we should not require the removal of the discrimination against interstate commerce that results from the Indiana intrastate rates.

Fertilizer in Indiana is charged the sixth-class rates, which is also the interstate basis. However, in Illinois there are commodity rates which are much lower, and the Indiana shippers would use the Illinois rates as the measure of the Indiana rates. It should be borne in mind that this case involves the relation between interstate and intrastate rates rather than the relation between the intrastate rates in two different states. If the rates in some state other than Indiana

¹ The 15 per cent increase was not applied to common brick, which moves in large volume.

are too low as compared with those in Indiana, the situation should not be corrected by interference with interstate traffic. The difficulty can be cured by proceeding against the unduly low rate in the other state on the ground that it is a discrimination against interstate and foreign commerce.

Several years ago, as previously indicated, we fixed a reasonable scale of rates for straw in central territory, which was applied intrastate in Indiana as well as interstate. The failure of the Indiana commission to grant a 40 per cent increase, of course, has resulted in much lower rates on this commodity intrastate in Indiana than applies interstate. The Indiana shippers oppose any further increase in these intrastate rates on the ground that they are now on about the same level as applies intrastate in Illinois, Iowa, Missouri, and Wisconsin. However, the basis upon which the present interstate rates were built was prescribed by us as reasonable. Moreover, the record shows that there is competition between the interstate and the Indiana intrastate shippers of straw, and it is admitted by the Indiana interests that there is no difference as between the interstate and intrastate conditions of transportation. The evidence of the carriers is that the lower rates in Illinois are the result of the failure of the carriers in that state to take into account the 15 per cent increase when they extended the central territory straw scale to that state. Apparently the 15 per cent increase was omitted intentionally for the reason that Illinois was considered in western territory in connection with the application of the carriers for the general 15 per cent increase. The rates in Iowa, Missouri, and Wisconsin are likewise on the basis of the central territory scale except for the 15 per cent increase.

Some instances are shown by the Indiana shippers in which the rates on strawboard between specific points in the so-called Illinois district, which includes Illinois and some adjacent territory around its borders, are much lower than apply in Indiana. However, on the other hand, they are also lower than the rates applicable to interstate traffic in official classification territory generally, the basis for which has been fixed by us as reasonable in *Building and Roofing Paper and Paper Board Rates, supra*.

The present intrastate commodity rates on logs in Indiana are shown by shippers to be much higher than those which apply intrastate and interstate for similar distances on certain lines in the southeast. Some of these southeastern lines also operate in Indiana, and there apply the prevailing Indiana basis. The shippers contend that therefore there is discrimination against intrastate commerce, particularly in view of the fact that operating costs are lower in Indiana than in the southeast. It appears that the southeastern rates with

which comparison is made are in most instances transit or proportional rates, or otherwise restricted in their application, for which due allowance should be made. Comparisons submitted by the carriers show that the present Indiana intrastate rates are much below the basis generally observed in central territory. Upon the whole, the Indiana scale in effect just prior to August 26, if increased 40 per cent, would compare favorably with the present interstate rates in central territory, but what the shippers desire is a much reduced scale of log rates for general application in Indiana and all central territory.

For a number of years points like Anderson and Muncie, in the gas belt, northeast of Indianapolis, were accorded rates on coal from Indiana mines generally on the basis of 25 cents per ton over Indianapolis. This relative basis was established some 15 or 20 years ago, when the gas-belt industries began to use coal because of the failure of the gas supply.

Formerly the rate from the Clinton and Linton districts, which furnish most of the coal, to Indianapolis, was 50 cents, and to the gas belt, 75 cents. Later there was an increase of 5 cents and then one of 10 cents in each rate, resulting in 65 cents to Indianapolis and 90 cents to the gas belt, the 25-cent difference being continued. In applying general order No. 28 the rate to Indianapolis became 90 cents and that to the gas belt \$1.25, the difference thus becoming 35 cents. Suffice it to say, without going into details, that the 10-cent increase in the difference against the gas belt grew out of the fact that the railroads in arranging for the increased rates from all the coal-producing points in Indiana took as a base the Boonville district rate, which was the highest available, and then deducted a certain figure to obtain the rate from the other districts. If they had taken the Clinton and Linton district rates as a base, the rate under general order No. 28 would have been 85 cents to Indianapolis and \$1.10 to the gas belt, instead of 90 cents and \$1.25, respectively. A 40 per cent increase would have meant a difference of 50 cents against the gas belt. The Indiana commission in its decision restored the 25-cent difference and also required the rates on coal to several other large cities in the state to be made on the same basis, although not in the gas belt. The requirements of the Indiana commission resulted in much lower rates to important manufacturing and distributing centers in Indiana than if the percentage increase had been allowed without restriction or qualification. The gas-belt interests urge that the maintenance of the 25-cent difference is of great importance to them and ask that we approve the Indiana commission's action. They contend that it was unfair for the carriers to use the rates from the Boonville district as a base, because the Boonville district furnishes only a negligible proportion

of the coal supply for the gas belt. The provisions of general order No. 28 with respect to the matter of differentials on coal are as follows:

Where rates from producing points or to destinations have been based on fixed differentials in cents per ton, such differentials to be maintained, the increase to be figured on the highest rated point or group.

Apparently there is nothing unusual about the manner in which general order No. 28 was complied with.

The rates on coal from the Indiana mines to the gas belt are compared with the rates from West Virginia, Kentucky, Tennessee, and Illinois mines to points in central territory. In making the comparisons 50 cents per ton was first deducted from all the rates to represent terminal costs or charges, so that the figures actually compared are assumed to represent the line hauls only. It is shown that the ton-mile earnings under these rates are generally higher from the Indiana mines than from the other mines. However, in considering the comparisons it should be borne in mind that rates on coal are not based on distance alone, and to make rates on the theory underlying the data referred to would have serious effects upon many carriers and coal operators.

No opposition to the 25-cent difference was expressed by Indiana cities not included in the adjustment, but we see no more reason for restoring destination difference bases in Indiana than in any other part of the country. Such differentials are practically unknown elsewhere in the coal-rate structure. The considerations which have actuated the establishment and preservation of fixed differentials as between coal-producing points are almost wholly lacking so far as destinations are concerned. The restoration of the gas-belt difference has the effect of preferring Indiana mines, as no such differential applies from Illinois and Ohio mines. Moreover, it gives the gas belt an advantage over other destinations in central territory.

The Indiana commission held that for any switching movement not involving a road haul, the rate on coal should not exceed \$10 per car. What constitutes a switching movement was not defined.

The Indiana commission held that for distances of 10 miles and less, the rate on coal should not exceed 55 cents per ton, and that for distances over 10 and under 30 miles, it should not exceed 65 cents per ton. The rates for these short hauls are applied principally to the movement of a large tonnage from the mines to Terre Haute. Prior to April 1, 1917, the rates for distances of less than 30 miles ranged from 20 to 30 cents per ton, but through successive increases in cents per ton during recent years, and the efforts of the Director General toward greater uniformity, the rates became much higher, culminating in a rate of 70 cents per ton, which was later voluntarily

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reduced to 60 cents except where two-line hauls were involved. The decision of the Indiana commission left the situation practically as it was at the end of federal control. The Indiana shippers contend that coal moving less than 30 miles is bearing its full share of the transportation burden and ask that we approve the Indiana commission's finding and exempt this traffic from any further increase. The Indiana shippers compare the increases that have been made in these rates during the past three years with the increases applied to rates for longer hauls. The former have been subjected to relatively greater increases. For instance, the rate from the Indiana mines to Indianapolis, formerly 50 cents, is now \$1.26, and that to Chicago, formerly 77 cents, is now \$1.78, while the rate for 10-mile hauls has been increased from 20 cents to 60 cents. In the report of the Indiana commission reference is made to *Utilities Development Corp. v. P., C., C. & St. L. R. R. Co.*, 56 I. C. C., 694, decided February 11, 1920, wherein we condemned a 70-cent rate from Bicknell to Edwardsport, Ind., involving a haul of about $4\frac{1}{2}$ miles, and fixed a rate of 40 cents as reasonable for the future. This 40-cent rate with a 40 per cent increase would approximate 55 cents, the rate allowed by the Indiana commission for hauls of 10 miles and less. Some of the movements between the mines and Terre Haute may be similar to those between Bicknell and Edwardsport, but our decision in the case cited was not intended as a criterion for judging short-haul rates in general.

No evidence was offered with respect to excursion, convention, and other fares for special occasions, commutation or other multiple forms of tickets, baggage charges in connection therewith, extra fares on limited trains, or club-car charges. Our findings and order will relate, therefore, so far as passenger traffic is concerned, only to the standard local and interline fares and baggage charges.

The law questions involved in this case have been discussed in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, and *Intrastate Rates within Illinois*, *supra*.

As above indicated, and as explained in its report and order, the Indiana commission, in dealing with the carriers' application for increases, was impelled, and in its own view compelled or duty bound, to conform to the precedent set by the Illinois authorities rather than to the findings of this Commission. There is now a possibility that other states in the eastern group will be inclined to follow Indiana and Illinois and prescribe lower rates than have been authorized. The effect of such action, if lawful, would be the defeat of the fundamental purposes of the transportation act. In fairness, we should state that the Indiana commission has heretofore consistently sought to view situations of the kind here before us from a
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national standpoint. The low level of intrastate rates in Illinois has long been the source of strife and controversy between Illinois and Indiana interests. The indications are that had the Illinois commission granted the increases sought, the Indiana commission, subject possibly to a few exceptions, would have done likewise. We have required a 40 per cent increase in intrastate rates in Illinois, in a supplemental report in *Intrastate Rates within Illinois*, 60 I. C. C., 92, which will remove much of the difficulty about which Indiana complains.

Upon this record we find no conditions in Indiana that are so different from those affecting interstate traffic as to justify the present differences in rates, fares, and charges. The Indiana intrastate rates, fares, and charges being lower than those applied by the same carriers to interstate commerce under substantially similar circumstances and conditions in central territory, injuriously affect interstate commerce by not contributing in fair proportion to the revenues of the carriers.

Upon consideration of the record, subject to the exceptions above noted, we are of the opinion and find that the increases made by the respondent steam railroads under Ex Parte 74, relating to passenger fares and baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the standard intrastate fares and charges correspondingly within the state of Indiana has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges; in undue prejudice to persons traveling in interstate commerce within the state of Indiana and between points in the state of Indiana and points in other states; in undue preference of and advantage to persons traveling intrastate in Indiana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares and excess-baggage charges.

We further find that the surcharges made by said respondent steam railroads under Ex Parte 74 upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce in the group considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate

commerce within the state of Indiana has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Indiana and between points in the state of Indiana and points in other states; in undue preference of and advantage to persons so traveling intrastate in Indiana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore established as aforesaid upon passengers so traveling in interstate commerce.

We further find that the increases made by the carriers under Ex Parte 74, relating to rates on milk and cream, and now in effect, result in reasonable rates on milk and cream for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Indiana to increase the intrastate rates on milk and cream correspondingly has resulted in the past and will result in intrastate rates lower than the corresponding interstate rates; in undue prejudice to shippers of milk and cream in interstate commerce within the state of Indiana and between points in the state of Indiana and points in other states; in undue preference and advantage to shippers of milk and cream in intrastate commerce in Indiana, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination can and should be removed by making increases in intrastate rates on milk and cream which shall correspond with the increases heretofore made as aforesaid in the rates on milk and cream shipped in interstate commerce.

We further find that, except for rates on coal for distances of less than 30 miles, the increases made by the carriers under Ex Parte 74 relating to rates and charges for all freight service and now in effect result in reasonable rates and charges for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Indiana to increase intrastate rates and charges for freight service in effect August 25, 1920, correspondingly has resulted in the past and will result in generally lower intrastate rates and charges than apply interstate; in undue prejudice to persons and localities outside the state; in undue preference of persons and localities in Indiana and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making in-

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creases in the intrastate rates and charges for freight service in effect August 25, 1920, except on coal for distances of less than 30 miles, which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate rates and charges.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, surcharges, rates on milk and cream, or charges for freight service pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the state of Indiana or any other interested party to apply in the proper manner for modifications of our findings and order with respect to any fare or charge on the ground that such fare or charge is not related to the interstate fares or charges in such manner as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

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commerce within the state of Indiana has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue prejudice to persons so traveling in interstate commerce within the state of Indiana and between points in the state of Indiana and points in other states; in undue preference of and advantage to persons so traveling intrastate in Indiana; and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore established as aforesaid upon passengers so traveling in interstate commerce.

We further find that the increases made by the carriers under Ex Parte 74, relating to rates on milk and cream, and now in effect, result in reasonable rates on milk and cream for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Indiana to increase the intrastate rates on milk and cream correspondingly has resulted in the past and will result in intrastate rates lower than the corresponding interstate rates; in undue prejudice to shippers of milk and cream in interstate commerce within the state of Indiana and between points in the state of Indiana and points in other states; in undue preference and advantage to shippers of milk and cream in intrastate commerce in Indiana, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and unjust discrimination can and should be removed by making increases in intrastate rates on milk and cream which shall correspond with the increases heretofore made as aforesaid in the rates on milk and cream shipped in interstate commerce.

We further find that, except for rates on coal for distances of less than 30 miles, the increases made by the carriers under Ex Parte 74 relating to rates and charges for all freight service and now in effect result in reasonable rates and charges for interstate transportation within the group considered in this proceeding, and that the failure of the carriers within the state of Indiana to increase intrastate rates and charges for freight service in effect August 25, 1920, correspondingly has resulted in the past and will result in generally lower intrastate rates and charges than apply interstate; in undue prejudice to persons and localities outside the state; in undue preference of persons and localities in Indiana and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making in-

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creases in the intrastate rates and charges for freight service in effect August 25, 1920, except on coal for distances of less than 30 miles, which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate rates and charges.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, surcharges, rates on milk and cream, or charges for freight service pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

These findings are without prejudice to the right of the state of Indiana or any other interested party to apply in the proper manner for modifications of our findings and order with respect to any fare or charge on the ground that such fare or charge is not related to the interstate fares or charges in such manner as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.
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INVESTIGATION AND SUSPENSION DOCKET No. 1235.
SAW LOGS BETWEEN MICHIGAN AND WISCONSIN
POINTS.

Submitted January 20, 1921. Decided February 9, 1921.

1. Proposed cancellation of certain specific rates on saw logs and bolts from points on the Chicago, Milwaukee & St. Paul Railway and the Wisconsin Northwestern Railway in northern Wisconsin and Michigan to Wisconsin points when for manufacture and reshipment via lines of respondent, found justified. Orders of suspension vacated to that extent.
2. Proposed cancellation of joint rates from points served by Copper Range and Mineral Range railroads found not justified. Proposed schedules ordered canceled.

J. N. Davis and O. W. Dynes for respondents.

F. M. Elkinton, F. H. Cogswell, and Ernest L. Ewing for protestants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

By tariffs filed to become effective November 15, 1920, the Chicago, Milwaukee & St. Paul Railway Company, hereinafter called the respondent, proposes to cancel certain specific commodity rates for the interstate transportation of saw logs and bolts when for manufacture, the product to be reshipped over its line. These rates apply from certain local points in the upper peninsula of Michigan; from stations in Michigan on the Copper Range and Mineral Range railroads; from named points in Wisconsin on respondent's Wisconsin Valley line, and on the Wisconsin Northwestern Railway. The destinations are Menominee, Mich., and Marinette, Menasha, Kiel, Green Bay, Merrill, Wausau, Schofield, and Grand Rapids, Wis. The movement to Menominee is through Wisconsin. The result of the proposed cancellations would be to make effective a distance scale of rates or a combination of locals higher than the existing rates. Protests against these cancellations having been filed, their operation was suspended until March 15, 1921.

The points of origin and destination fall into two groups: (a) points of origin served by, or tributary to, the Superior division of

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respondent; that is, points in the northern peninsula of Michigan on the line from Ontonagon through Channing, or points on lines connecting therewith, and points of destination south of Channing along the west shore of Lake Michigan; and (b) points of origin on the Wisconsin Valley line from Blue Bill, Mich., to Merrill, Wausau, Schofield, and Grand Rapids. The record deals mainly with the situation with respect to traffic over the Superior division. Some of the rates which it is proposed to cancel are named in amounts per 1,000 feet, others are stated in amounts per 100 pounds, and in some instances rates per 1,000 feet and per 100 pounds are published in the same tariff.

The territory embracing these points of origin is served by respondent the Chicago & North Western and other rail carriers. Many years ago rates on logs were established in this territory by the respondent under contracts with log producers, and had been made primarily under two competitive influences; first, the ability of the lumbermen to float their logs to the mill from which they were generally shipped out by water as lumber or products thereof; and second, the ability of a competing carrier to build into the timber district. These contracts contemplated train-load movements of logs and rates were expressed in dollars per thousand feet; when the tariffs were amended and restricted to carloads, no change in the measure of the rates themselves was made, and no changes have since taken place with the exception of the general rate increases. According to respondent the result is that the present rates are on too low a level.

In addition to these so-called special contract rates, which take care of the principal log movements in the states of Wisconsin and Michigan, respondent has in effect a distance tariff basis of rates. This distance tariff, as well as the special contract rates, is predicated upon the respondent's receiving the outbound shipment of the manufactured products of the logs. In this proceeding the respondent is asking permission to change to the same basis of rates that is now applicable on intrastate traffic in Wisconsin and Michigan where two distance scales of rates are in effect, one applying where respondent receives the outbound shipment of the manufactured product and the other applying where it does not. The same distance bases are also in effect state and interstate in Wisconsin and Michigan from stations on the Chicago & North Western, which is the only other principal carrier serving this section.

The exhibits offered for the purpose of showing the effect of the proposed changes in rates are not entirely in accord with respect to the proper weights per 1,000 feet of various kinds of lumber.

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To express in cents per 100 pounds the equivalent of a rate per 1,000 feet is impossible except as an approximation. Logs of equal dimensions, which when sawed will produce 1,000 feet of lumber, will, when dry, weigh much less than when green, and logs of large diameter will yield more board feet when sawed than will an equal weight of smaller logs, there being less waste.

In order to show the significance of the proposed changes, exhibits were prepared by respondent which give the equivalents in cents per 100 pounds for rates per 1,000 feet, according to different weights per 1,000 feet assumed as a standard. These exhibits show practically no change from present rates when 10,000 pounds per 1,000 feet is used as the basis of calculation. Protestants, however, insist that this weight is much too low and claim that 13,000 or 14,000 pounds per 1,000 feet would more truly represent the actual facts. Certain test weighings made by protestants and by respondent independently seemed to indicate that certain shipments of logs recently moved from these points of origin show that they weighed approximately 13,000 pounds per 1,000 feet. Upon the basis of these calculations protestants show an increase in the rates sought over those in force June 24, 1918, which range up to 129 per cent. But if the rates proposed by respondent are just and reasonable, the percentages of increases over rates formerly in effect mean little.

The following table taken from exhibits of protestant shows the present and suspended rates and ton-mile and car-mile earnings under present and proposed rates on saw logs from points on Chicago, Milwaukee & St. Paul in northern peninsula of Michigan to Marinette, Wis., and Menominee, Mich.

Points of origin.	Distances. ¹	Rates.		Earnings per car-mile.		Earnings per ton-mile.	
		Present.	Proposed.	Present rates.	Proposed rates.	Present rates.	Proposed rates.
	<i>Miles.</i>			<i>Cnts.</i>	<i>Cnts.</i>	<i>Mills.</i>	<i>Mills.</i>
Bowl's Spur.....	185.3		5.5 cents per	14.8	18.8	4.4	5.9
Britton's Spur.....	154.4		100 pounds	14.2	17.8	5.8	7.2
Mass.....	163.2	\$5.49 per	or \$7.425 per	13.4	16.9	5	6.7
McKeever.....	162.4	1,000	1,000 feet on	13.6	17	5.1	6.8
Tolfree.....	195.1	feet.	the basis	11.2	14.1	4.2	5.6
Hubbell's Mill.....	167.8		of 13,500	13.8	17.6	5.2	7
Port.....	155.9		pounds per	14	17.6	5.3	7.1
Wass Siding.....	161.1		1,000 feet.	13.6	17.1	5.1	6.8

¹NOTE.—Distances shown are to Marinette; Menominee is 1.8 miles less distant.

In this showing it is not indicated that the proposed rates are unduly high. Ton-mile earnings under the rates from these points prior to June 25, 1918, ranged from 2.5 mills from Tolfree to 3.1 mills from Britton's Spur, upon shipments to Marinette and Menominee.

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The mileage zone scale which would apply on the transportation of saw logs and bolts for manufacture and reshipment via the lines of the respondent is in cents per 100 pounds as follows:

40 miles and under.....	2 cents.
41 to 70 miles.....	2.5 cents.
71 to 95 miles.....	3.5 cents.
96 to 111 miles.....	4 cents.
112 to 150 miles.....	4.5 cents.
151 to 195 miles.....	5.5 cents.
196 to 230 miles.....	6 cents.
231 to 260 miles.....	7 cents.
261 to 300 miles.....	7.5 cents.

For the protestants it is pointed out that the proposed mileage groups and the corresponding rate progression in the amounts of 0.5 cent and 1 cent per 100 pounds for distances which are not uniform, will create rate differences or spreads between closely adjacent and competing log shippers who have been on an equal rate basis in the competitive log markets for many years. While irregularities of progression are apparent in the rate scale, it is also true that this scale will result in a contraction of the groups on the principle of distance; and in view of the fact that this same distance scale of rates has been in effect for some time over the lines of the Chicago & North Western and is now in effect on respondent's lines in Wisconsin and Michigan upon state traffic, if the rates themselves be reasonable and just, the claimed irregularities are of minor consequence.

Other exhibits were offered by protestants making comparison of the present with the proposed rates from points on the Copper Range and the Mineral Range to Kiel and Menasha. From stations on the Copper Range the proposed rates are from 10.5 to 13 cents per 100 pounds for average distances of 239 to 283 miles. From points on the Mineral Range the proposed rates for distances of from 243 to 273 miles are in no case more than 1 cent over present rates, and in a considerable number of instances are the same as and in one instance lower than the present rates. A further analysis of these exhibits discloses that the present rates from points on the Copper Range are 8 and 9 cents and yield car-mile earnings of 19 to 22.6 cents, and that from points on the Mineral Range the present rates of 9.5 cents to 11.5 cents yield car-mile earnings of 22 to 25.1 cents. These rates seem consistent with the proposed distance scale; their cancellation would result in making applicable combinations of local rates to junction points and respondent's distance scale beyond; and the combinations from points on the Mineral Range would be rates per 1,000 feet to the junction plus the rates per 100

pounds beyond. The cancellation of joint rates from points on the Copper Range and the Mineral Range has not been justified.

Protestants urge that the proposed increased rates being for application only when the outbound product is reshipped via respondent's lines are in the nature of transit rates and should therefore be made on a low basis, but even as transit rates the rates proposed do not appear unreasonable or excessive in so far as local points and points on the Wisconsin Northwestern are concerned.

We find that the respondent has justified the reasonableness of the rates which would result from the proposed cancellations under suspension herein, except as to the joint rates from points on the Copper Range and the Mineral Range, the cancellation of which is carried in supplement No. 2 to respondent's tariff I. C. C. No. B-3827, as to which we find that the proposed cancellation has not been justified.

An order will be entered vacating the orders of suspension herein except as to the last-named supplement, with respect to which an order will be entered making the suspension permanent.

60 I. C. C.

No. 10936.

ATLANTIC REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.

Submitted February 19, 1920. Decided January 3, 1921.

Rates on bituminous coal, in carloads, between yards of complainant in Philadelphia, Pa., not shown to have been unreasonable. Complaint dismissed.

John H. Stone and E. H. Porter for complainant.

Henry Wolf Bickel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS McCHORD, HALL, AND EASTMAN.

BY DIVISION 3:

A proposed report was served upon the parties, to which no exceptions were filed.

Complainant is a corporation dealing in petroleum and its products at Philadelphia, Pa. It alleges that the rates of \$12.50, \$19.50, and \$21 per car charged by defendants on cars of 110,000, 130,000, and 140,000 pounds capacity, respectively, for the transportation of 362 carloads of bituminous coal over the Pennsylvania Railroad between complainant's Philadelphia yard and its Atlantic yard, in Philadelphia, a distance of 1.6 miles, during the period between June 25 and November 15, 1918, inclusive, were unjust and unreasonable, in violation of section 1 of the act to regulate commerce and section 10 of the federal control act, to the extent that they exceeded rates of \$9.50, \$12, and \$13 per car, respectively, established November 16, 1918. It further alleges that the latter rates, which are still in effect except as increased under *Increased Rates, 1920*, 58 I. C. C., 220, are unjust and unreasonable to the extent that they exceed \$6.50 per car contemporaneously maintained for moving commodities other than coal between the same points. The prayer is for reparation and the establishment of just and reasonable rates. Except under circumstances not here present our jurisdiction over intrastate rates terminated with the ending of federal control. Only the rates in effect during the period of federal control will therefore be considered.

Effective December 27, 1917, at the request of complainant, the defendant carrier established on bituminous coal between the yards in
60 I. C. C.

question rates of \$7.50 on a car of 110,000 pounds or less capacity, \$9.75 on a car of 130,000 pounds capacity, and \$10.50 on a car of 140,000 pounds capacity, which were the rates in effect for similar service at other points in New York, New Jersey, and Pennsylvania. These rates were first filed with us on June 12, 1918, and remained in effect until June 25, 1918, when they were increased to \$12.50, \$19.50, and \$21 per car, respectively, under general order No. 28 of the Director General of Railroads. That order provided that where the rate on coal was 49 cents or less per ton it should be advanced 15 cents per ton of 2,000 pounds. Upon the theory that the rate of \$10.50 per car of 140,000 pounds, for example, was equivalent to 15 cents per ton, the addition of the 15 cents authorized by the order made the rate 30 cents per ton or \$21 per car. This process of reasoning was followed with respect to the cars of lesser capacity, except that on cars of 110,000 pounds capacity or less the rate was by mistake increased to \$12.50 instead of \$15 per car. The rates thus established were canceled November 16, 1918, when rates of \$9.50, \$12, and \$13 per car on cars of 110,000 pounds, 130,000 pounds, and 140,000 pounds, respectively, were established, based on 125 per cent of the rates in effect on June 24, 1918. This readjustment, which resulted in reductions, was general in character and affected rates for similar services throughout the United States.

Although the distance between complainant's two yards is but 1.6 miles, the movement of cars from one to the other is not a simple process. From the Philadelphia yard the cars move over the main line of the Pennsylvania to Twenty-fifth street, at which point it is necessary to shift the engine to the rear end of the train, which is then moved to the classification yard just below Passyunk avenue. From that point it is hauled by another engine to the Atlantic yard. While these trains are operating between the Philadelphia plant and Twenty-fifth street the main-line traffic in both directions, which is in great volume, is delayed.

Complainant rests its case largely upon the subsequent reduction voluntarily made by the Director General, and upon the further showing that a rate of \$6.50 per car is applicable for a like transportation service on commodities other than coal. The fact that lower rates were subsequently established does not of itself warrant a conclusion that the rates established June 25, 1918, were unreasonable. Defendants point out that rates for switching coal and for switching merchandise are not comparable; that the average loading of merchandise is 30 tons per car, whereas the average loading of coal is 50 tons per car; and that the general practice is to assess a lower rate for switching merchandise than for switching coal.

We find that the rates assailed are not shown to have been unreasonable. An order dismissing the complaint will be entered.

60 I. C. C.

No. 10829.

SOUTHPORT MILL, LIMITED,

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted October 21, 1920. Decided December 23, 1920.

Rates on imported copra, in carloads, from the Pacific coast to New Orleans and Baton Rouge, La., found unreasonable. Reparation awarded.

Stuart R. Barnett, Carl Giessow, and Edgar Moulton for complainant.

Victor Leovy; Baker, Botts, Parker & Garwood; and Denegre, Leovy & Chaffe for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND WOOLLEY.

BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued before us.

Complainant is a corporation operating oil mills at New Orleans and Baton Rouge, La. By complaint seasonably filed it alleges that the fifth-class domestic rate of \$2.10 and the import commodity rate of \$1.125 charged by the defendants on numerous carloads of imported copra shipped from San Francisco and Oakland, Calif., and Seattle and Tacoma, Wash., to New Orleans and Baton Rouge between June 27, 1918, and August 28, 1918, inclusive, were unreasonable to the extent they exceeded an import commodity rate of 85 cents subsequently established. Reparation is asked. Rates are stated herein in amounts per 100 pounds.

The shipments moved over defendants' lines via various routes. The domestic class rate of \$2.10 was legally applicable during the first few days of the period in question and the import commodity rate of \$1.125 during the remainder of the period and up to September 16, 1918, on which date an import commodity rate of 85 cents was established from and to the points in question.

The issues presented in this case are identical with those in *Procter & Gamble Co. v. Director General*, 57 I. C. C., 465, in which the rates on imported copra, in carloads, from the Pacific coast to Houston 60 I. C. C.

and Dallas, Tex., Ivorydale, Ohio, and Port Ivory, N. Y., were attacked. In that proceeding the shipments moved at the import commodity rate of \$1.125 and reparation was awarded upon the basis of the 85-cent import commodity rate established on September 16, 1918.

A history of the growth of the copra-crushing industry in the United States and of the copra rates eastbound from the Pacific coast is contained in the case cited. The evidence and contentions of the respective parties to this case are along the same lines as those presented in the case mentioned and afford no basis for a different conclusion.

We find that the rates assailed were unreasonable to the extent that they exceeded the import commodity rate of 85 cents subsequently established, that the complainant made numerous shipments of imported copra in carloads from and to the points in question and paid and bore the charges thereon, that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rate herein found reasonable, and that it is entitled to an award of reparation, with interest. Complainant should comply with rule V of the Rules of Practice. We are without authority to order refund of excess war taxes.

60 I. C. C.

No. 10629.

WICHITA BOARD OF COMMERCE ET AL

*v.*DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.

Submitted February 11, 1920. Decided December 31, 1920.

Rates on paper tablets, in carloads, from St. Joseph, Mo., to Wichita, Kans., found not unreasonable or unduly prejudicial. Complaint dismissed.

W. P. Huston for complainants.

F. E. Andrews for defendants.

M. A. Gray for intervenor.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, DANIELS, AND WOOLLEY.

BY DIVISION 2:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by defendants, and the case was orally argued before us.

By complaint seasonably filed the Wichita Board of Commerce, a corporation chartered to promote the commerce and industry of Wichita, Kans., and the C. E. Potts Drug Company, the Southwestern Drug Company, corporations, and C. A. Tanner & Company, a partnership composed of C. A. Tanner and L. A. Will, allege that the rates on paper tablets, in carloads, from St. Joseph, Mo., to Wichita, were and are unjust, unreasonable, unduly prejudicial, and unjustly discriminatory in comparison with rates contemporaneously maintained from St. Joseph to Salina, Kans. We are asked to award reparation on shipments moving since May 10, 1917, and to establish a reasonable and nonprejudicial rate for the future. The H. D. Lee Mercantile Company, of Kansas City, Mo., with a branch at Salina, intervened in support of the present adjustment of rates. Rates will be stated in cents per 100 pounds.

Paper tablets, in carloads, are rated fifth class in exceptions to western classification, which govern in that territory. The fifth-class rates of 86 cents prior to June 25, 1918, and 45 cents thereafter were assessed. The fifth-class rates contemporaneously applicable

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from St. Joseph to Salina were 27 cents and 34 cents, respectively. The minimum weight applying in connection with these rates was and is 36,000 pounds.

Wichita is located in the south central part of Kansas on the main lines of both the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, and the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, extending from St. Joseph. Salina is in the north central part of the state on the main line of the Union Pacific, which, however, does not extend to St. Joseph. The Rock Island and the Santa Fe reach Salina via branch lines. The short-line distance from St. Joseph to Wichita is 232 miles, via the Santa Fe, while to Salina it is 190 miles, via the Santa Fe to Topeka, Kans., and the Union Pacific beyond. The average distance of the one-line routes from St. Joseph to Salina is shown as 248 miles, as compared with 257 miles to Wichita.

Complainants' comparison of car revenue under commodity rates on other articles in effect from St. Joseph to both Salina and Wichita shows that these rates, when not the same to the two points, are so nearly alike that the differences in car revenue in no instance exceed \$14, whereas the difference in car revenue on paper tablets is \$39.60.

Complainants show that in 1886 the fifth-class rate from St. Joseph to Wichita was only 1 cent higher than to Salina; that in 1887 it was 3 cents, in 1890, 7 cents, in 1911, 9 cents, and in 1918, 11 cents, higher; and that these changes were all published on the carriers' own initiative. This relationship is compared with the fifth-class rates in 12 different class-rate distance scales in effect in this general territory, which shows that the Salina rate would average 1 cent under the rate of Wichita. Similar comparisons using the average short-line distance of the direct routes from St. Joseph, Atchison, and Leavenworth, Kans., and Kansas City, the three latter points taking the same rate as St. Joseph to these destinations; the average distance via the direct one-line routes from St. Joseph to the respective cities; and the respective short-line distances, a one-line haul to Wichita and a two-line haul to Salina, produced an average difference against Wichita of less than 1 cent. A further comparison, based upon the respective short single-line distances of 232 and 219 miles, shows an average difference against Wichita of 2.1 cents.

Defendants contend that the above comparisons attach too much importance to relative distances; that class rates to Wichita are made with relation to the higher basis applicable to points in Oklahoma; and that rates from the Missouri River are related to those from St. Louis as indicated by our report in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673. There we prescribed fifth-class

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rates of 51 cents and 45 cents from St. Louis to Wichita and Salina, respectively, or a spread of 6 cents. The corresponding spread in connection with the shorter hauls from Kansas City at that time was 9 cents. Following general order No. 28 these spreads became 7.5 cents and 11 cents, respectively.

Many commodity rates on paper tablets are cited by complainants which range from fifth class to 12.5 cents lower than the fifth-class rates. Defendants, on the other hand, cite rates on this commodity which are the same as or higher than the rate assailed, for approximately the same distances. The average fifth-class rates under the 12 distance scales hereinbefore mentioned for the average distances from St. Joseph of 248 miles to Salina and 257 miles to Wichita are 47.7 and 48.58 cents, respectively.

To meet complainants' allegation that in jobbing paper tablets in less-than-carload lots they are in competition with jobbing houses at Salina, and are placed at an unlawful disadvantage by defendants' adjustment of rates from St. Joseph to these two jobbing points, defendants offered comparisons of the in-and-out combination rates to many Kansas points using the respective carload rates inbound, and less-than-carload rates outbound. These comparisons show that the less-than-carload rates applying from Wichita are on the same distance basis as the less-than-carload rates from Salina; that at certain points Salina has an advantage over Wichita, and that there are an equal number of points where the advantage lies with Wichita. The rates to these ultimate consuming points are not in issue and the comparisons prove nothing, so far as the reasonableness *per se* or the nonprejudicial character of the rate from St. Joseph to Wichita itself is concerned. The fifth-class rate to Wichita is not attacked except as it applies to paper tablets.

Upon this record we find that the rates assessed on paper tablets, in carloads, from St. Joseph to Wichita were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

601 C. C.

No. 11828.

NORTH CAROLINA FARES AND CHARGES.

IN THE MATTER OF INTRASTATE FARES AND CHARGES
OF THE ATLANTIC COAST LINE RAILROAD COMPANY
AND OTHER CARRIERS IN THE STATE OF NORTH
CAROLINA.*Submitted February 2, 1921. Decided February 7, 1921.*

- Certain fares required by state authority to be maintained by certain of the respondents within the state of North Carolina found to be lower than the corresponding interstate fares authorized in *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce.
2. Certain charges required by state authority to be maintained by certain of the respondents within the state of North Carolina found to be lower than the corresponding charges maintained in interstate commerce within North Carolina and between points in North Carolina and points in other states and to be unjustly discriminatory against interstate commerce.
 3. Baggage allowance of 200 pounds required by state authority to be maintained by certain of the respondents within the state of North Carolina found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce.
 4. Fares, charges, and baggage allowance prescribed which will remove such undue preference, undue prejudice, and unjust discrimination.

James S. Manning, Frank Nash, W. T. Lee, George P. Pell, R. O. Self, and W. G. Womble for state of North Carolina and Corporation Commission of the State of North Carolina.

John E. Benton for National Association of Railway and Utilities Commissioners.

Charles J. Rixey, jr., Frank W. Gwathmey, Lucian H. Cocke, and P. A. Willcox for respondent carriers.

REPORT OF THE COMMISSION.

HALL, Commissioner:

In Ex Parte 74, *Increased Rates, 1920*, 58 I. C. C., 220, we authorized increases in rates, fares, and charges to be made by all steam railroads subject to our jurisdiction in the southern group. These

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increases, for movements within that group, which embraces most of what is commonly known as southern classification territory, were 25 per cent in freight rates; 20 per cent in passenger fares and charges, excess-baggage charges, and rates on milk and cream; and also a surcharge upon passengers in sleeping and parlor cars amounting to 50 per cent of the charge for space in such cars, to accrue to the rail carriers. Increased rates, fares, and charges pursuant thereto were established for interstate application, effective August 26, 1920.

Prior and subsequent to our decision of July 29, 1920, in *Increased Rates, 1920, supra*, the carriers by steam railroad operating in the state of North Carolina applied to the corporation commission of that state, hereinafter referred to as the North Carolina commission, for permission to make increases in their intrastate rates, fares, and charges similar to those authorized by us on interstate traffic. Hearings were held by the North Carolina commission, and all of the evidence before us in Ex Parte 74 was made part of the record before it. This evidence has also been made part of the record in this proceeding. By its order of August 27, 1920, the North Carolina commission authorized the requested increases, effective on 15 days' notice, except those in standard local or interline passenger fares and in the charges hereinafter considered.

During federal control, and at the time when Ex Parte 74 was decided, intrastate and interstate passengers in North Carolina and generally throughout the United States were permitted 150 pounds of baggage without additional charge, except that children traveling on half-fare tickets were allowed 75 pounds. A North Carolina statute requires 200 pounds of baggage to be transported within North Carolina without additional charge. The statute was inoperative during federal control, but on September 1, 1920, the allowance of 200 pounds was again made applicable intrastate because respondents felt constrained to comply with the statute until they could secure relief. The allowances of 150 and 75 pounds continue to apply interstate generally throughout the country and, with very few exceptions, intrastate as well.

On September 9, 1920, certain carriers by steam railroad operating in North Carolina, and the Piedmont & Northern Railway Company, an electric line engaged in interstate and intrastate transportation in that state, filed with us a petition on their own behalf, and on behalf of all steam railroads operating in the state, for relief in accordance with the provisions of section 13 of the interstate commerce act. This proceeding, to which all railroads subject to our jurisdiction operating in the state of North Carolina have been made parties respondent, was then instituted.

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PASSENGER FARES.

From 1908 to June 10, 1918, 2.5 cents per mile was the basis for intrastate and interstate passenger fares in North Carolina and throughout the southern group generally. On that date the basis was increased to 3 cents per mile under general order No. 28 of the Director General of Railroads. On August 25, 1920, while the carriers' application was pending before the North Carolina commission, the general assembly of that state passed an act fixing a basis of 3 cents per mile for the intrastate transportation of passengers but allowing independently owned and operated railroad companies with a mileage in the state of 100 miles or less to charge on a basis 20 per cent higher. Certain of these carriers have accordingly increased their intrastate fares to a basis of 3.6 cents per mile, and, although joining in the petition, submitted no evidence and stated that they sought no further relief. The act further authorized and directed the North Carolina commission "to make a full and complete investigation of the conditions of passenger transportation" and to report to the next general assembly.

Generally speaking, at the present time the basis for interstate passenger fares in the southern group is 3.6 cents per mile. This basis is also in effect intrastate in all the states within that group, except North Carolina, South Carolina, and Louisiana. In these states the intrastate basis is 3 cents per mile.

The relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, and club-car charges, is not in issue. All such fares and charges have been increased 20 per cent.

Evidence offered by respondents indicates that if the present intrastate fares are continued for one year and the intrastate travel during that year is the same as in the calendar year 1919 the direct loss of revenue to nine of the more important respondents through failure to secure the 20 per cent increase in these fares will approximate \$1,748,000. Based on the passenger travel during the first six months of 1920 the loss for six months would approximate \$884,500. It is said that their intrastate passenger revenue in North Carolina for 1919 represents about 46 per cent of their total passenger revenue in the state, and for the first six months of 1920 about 52 per cent.

All the respondents except the Piedmont & Northern carry both intrastate and interstate passengers on the same trains with the same service and accommodations. The intrastate passenger paying the lower fare, rides in the same car and perhaps in the same seat with the interstate passenger who pays the higher fare. The evidence is to the effect that there are no traffic or transportation con-

ditions in the state of North Carolina which justify a lower basis of fares for transportation intrastate than interstate. On the contrary the haul of interstate passengers averages in distance for the different respondents from two to five times that of intrastate passengers. This is said to result in less cost interstate than intrastate in so far as ticketing arrangements, handling of baggage, and other incidental requirements of transportation are concerned.

The lower state basis affects localities outside the state. For example, Charleston, Columbia, Greenville, and Spartanburg, in South Carolina, and Norfolk, Richmond, Lynchburg, Roanoke, and Danville, in Virginia, are distributing points and trade centers in active competition with Charlotte, Raleigh, Greensboro, Goldsboro, Fayetteville, and Winston-Salem, in North Carolina. The lower intrastate basis tends to draw trade and travel to such North Carolina points with resulting prejudice to competing cities in these adjoining states.

The record contains many illustrations of the way in which the North Carolina intrastate fares have the effect of reducing the earnings on interstate traffic, or rather on what would be interstate traffic if it were not for the difference in fares. Travelers going to or coming from points outside the state find it cheaper to pay the intrastate fare within North Carolina and the interstate fare beyond the border than to pay the through interstate fare. Witnesses for respondents testified that in the past when fares were on a lower level intrastate than interstate this practice was very common and almost impossible to eliminate. Conductors having representative runs on several of the respondents' lines testified that at the time of the hearing this practice was quite general, was steadily increasing, and was seriously interfering with and hampering them in the proper discharge of their duties. Experience has shown that, whatever the condition which creates it, a lower level of fares intrastate than interstate can not be maintained, and ultimately the interstate fares must be reduced to the level of the intrastate fares. Moreover, it will be difficult, if not impossible, to maintain a lower level of fares in North Carolina and at the same time maintain the present intrastate basis of 3.6 cents per mile in other states of the southern group, some of which adjoin North Carolina.

Passenger traffic over interstate routes between North Carolina points is at a substantial disadvantage as compared with that over intrastate routes between the same points. From Wilmington to Asheville and other western North Carolina points there is an important interstate route via Columbia, S. C. The fare over this route is \$12.68. Over the intrastate route via Sanford, N. C., the fare is \$10.52, a difference of \$2.11 in favor of the intrastate route. Other typical instances are of record.

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MINIMUM CHARGE.

For a number of years prior to August 26, 1920, the minimum charge for a passenger in North Carolina had been 10 cents, interstate and intrastate, the latter prescribed by a state statute. On August 26, 1920, the interstate charge was increased 20 per cent to 12 cents. The intrastate charge is still 10 cents. There are 1,344 stations in North Carolina affected by this minimum charge. The record does not show how many stations would be affected by a minimum charge of 12 cents. The situation is similar to that outlined in *South Carolina Fares and Charges*, 60 I. C. C., 290, except that in South Carolina the intrastate minimum charge is 5 cents. For the reasons there given a similar finding, based on this record, will be made here.

CONDUCTOR'S PENALTY CHARGE.

This charge applies when a passenger, after boarding a train at a station where a ticket office was open at the time, pays his fare in cash. Such a charge, usually 15 cents, but in some cases 10 cents, was made in nearly all states in the southern group prior to federal control on both intrastate and interstate traffic. During federal control the charge was 15 cents on all interstate traffic and the same for intrastate traffic, except in Kentucky and Virginia, where the charge was 10 cents. These charges have now been increased interstate under Ex Parte 74 to 18 cents throughout the southern group, and to the same amount intrastate except in North Carolina, South Carolina, and Virginia. In North Carolina the penalty charge and the minimum charge are prescribed by the same statute. A witness for respondents testified:

The purpose of a penalty, as we refer to it in railroading, is to force the public to purchase from duly accredited ticket agents tickets to present on the train, instead of paying cash on the train. As I have said before * * * the train conductors have very much responsibility in the operation of their trains, and they have very little time to devote to long drawn out conversations and controversies with passengers who have not provided themselves with tickets and who are called upon to pay train fares with the excess.

If all of the passengers that we haul on the several railroads in this state paid cash fares on the trains we would have to very materially increase the organizations who man and operate the passenger trains. The particular purpose therefore of the excess fare paid to conductors is to force passengers to purchase tickets as far as may be practicable, and thus relieve the conductors of a great lot of detail clerical work, when the conductors should, and they themselves would prefer to, be attending to their train orders and meeting points, and to the taking on and discharge of passengers, and to the further beneficial effect and results upon the public, as well as the railroads, of getting their trains to their home stations on time.

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It is obvious that the two classes of traffic are accorded different treatment. Two passengers board the train at the same agency station without having purchased tickets. Both pay fare to the conductor on the train. One names a destination just inside the state line and pays a penalty of 15 cents, the other a destination just beyond the state line and pays a penalty of 18 cents, in addition to the fare. No justification for this difference in treatment is made to appear, and the resulting unjust discrimination against interstate commerce must be removed. But we think that the southern carriers erred in applying to these penalties the 20 per cent increase in transportation fares and charges authorized by Ex Parte 74, and that the penalty should not exceed 15 cents as during and before federal control. Our conclusion as to the amount is without prejudice to any further consideration of the charge in the future upon a more comprehensive record.

BAGGAGE ALLOWANCE.

Although the carriers' request for authority to increase their passenger fares was denied by the North Carolina commission they were allowed to increase their intrastate excess-baggage charges 20 per cent. These charges as now computed are a percentage of the intrastate fares increased by 20 per cent. The carriers' estimates submitted in Ex Parte 74 included a baggage allowance of 150 pounds both intrastate and interstate with charge for excess above that weight. Allowance without additional charge of a greater weight tends to reduce respondents' revenues below what was contemplated in Ex Parte 74. Statistics submitted by nine of the principal respondents show that in the year 1919, when the allowance was 150 pounds, they collected \$51,815.84 for intrastate excess-baggage charges. They estimate that the loss for one year because of increase of the weight allowance to 200 pounds in intrastate traffic would approximate \$20,700. What has been said as to undue preference of persons and localities and unjust discrimination against interstate traffic with respect to the difference in passenger fares also applies to this difference in baggage allowance. It is of particular advantage to commercial houses in North Carolina having traveling commercial salesmen as they are allowed 200 pounds of baggage whereas salesmen crossing the border are limited to 150 pounds. The allowance of 150 pounds has been in effect interstate for many years and its reasonableness seems never to have been attacked. It has also been applied intrastate in nearly all of the states since prior to federal control. In our opinion it is a reasonable allowance.

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THE PIEDMONT & NORTHERN RAILWAY.

In *Increased Rates, 1920, supra*, 254, in approving freight-rate increases of electric lines equal to those proposed for trunk lines in the same territory we said that this was "not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines." There was, however, no approval of increases in such fares. The Piedmont & Northern attempted to increase its interstate fares to a basis of 3.6 cents per mile on five days' notice under Ex Parte 74, but its tariffs were rejected by us. Subsequent to the hearing in this proceeding that basis has been made effective on statutory notice of 30 days. As stated before, it is a party to the petition for relief under section 13 because the basis for its intrastate fares is 3 cents per mile. The testimony is that it may and does compete with steam carriers and that it participates in through interstate traffic with certain steam lines, but exhibits submitted on its behalf showing revenues for the year 1919 and the first six months of 1920 do not show the receipt of any revenue from interstate passenger traffic. The present record does not warrant us in making a finding of undue prejudice or unjust discrimination on account of the difference in the level of its intrastate and interstate fares and charges or a finding as to what would be reasonable fares and charges in order to remove any undue prejudice or unjust discrimination which may exist.

GENERAL.

We deem it unnecessary to dwell upon the contentions of the state authorities or of respondents. In the main, they are the same as those considered by us in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350; and *Wisconsin Passenger Fares*, 59 I. C. C., 391.

No evidence was offered on behalf of the state of North Carolina. The attorney general and the North Carolina commission adopt as their own the brief filed in the *New York Case, supra*, on behalf of the various state commissions. They contend further that no action should be taken by us pending further possible action by the general assembly of North Carolina upon the report required by the act of August 25, 1920, to be submitted to it. The general assembly is now in session. It does not appear that the investigation required by that act has been made or the report submitted. In answer to a somewhat similar contention in *Arkansas Rates and Fares*, 59 I. C. C., 471, we said:

The desirability of concerted action of the state and federal regulatory bodies in all matters of transportation in which the power of both is involved has been given recognition in the interstate commerce act. The action of respondents in bringing the matter before us in advance of the filing of an application with
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the corporation commission and a determination by it renders difficult the co-ordinated action contemplated by Congress and deprives us of the benefit of such investigation and findings as the state authorities might have made. However, we are here confronted with practical questions for the solution of which Congress has provided a practical course of procedure by means of which substantial justice is assured. Respondents have elected to pursue that course, and we are not vested with appellate power under which they might be remanded to tribunals of the state.

FINDINGS.

Following the New York, Illinois, and Wisconsin cases, and upon this record, subject to the exception above noted in respect to commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, and club-car charges, we are of opinion and find that the increases made by the respondent steam railroads, namely, Atlantic Coast Line Railroad Company; Atlantic & Yadkin Railway Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; Carolina, Clinchfield & Ohio Railway Company; Danville & Western Railway Company; Durham & South Carolina Railroad Company; High Point, Randleman, Asheboro & Southern Railroad Company; Louisville & Nashville Railroad Company; Norfolk & Western Railway Company; Norfolk Southern Railroad Company; Raleigh & Charleston Railroad Company; Seaboard Air Line Railway Company; Southern Railway Company; Tallulah Falls Railway Company; Washington & Vandemere Railroad Company; Winston-Salem Southbound Railway Company; and Yadkin Railroad Company, under Ex Parte 74, relating to passenger fares and now in effect, result in reasonable passenger fares for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the standard intrastate fares accordingly within the state of North Carolina has resulted and will result in intrastate fares lower than the corresponding interstate fares, in undue prejudice to persons traveling in interstate commerce within the state of North Carolina and between points in the state of North Carolina and points in other states, in undue preference of and advantage to persons traveling intrastate in North Carolina, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by making increases in said intrastate passenger fares which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares.

We further find that the increases made by said respondent steam railroads under Ex Parte 74 relating to the minimum charge per passenger, and now in effect, result in a reasonable minimum charge

per passenger for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase the minimum charge per passenger for intrastate transportation within the state of North Carolina has resulted and will result in unjust discrimination against interstate commerce.

We further find that said unjust discrimination can and should be removed by making increase in said intrastate minimum charge which shall correspond with the increase heretofore made by said respondents as aforesaid in the interstate minimum charge.

We further find that the maintenance by said respondent steam railroads of a penalty charge in addition to the regular fare against interstate passengers in North Carolina who board trains without tickets at points where tickets might have been purchased, while contemporaneously maintaining a lower penalty charge against intrastate passengers in North Carolina who board trains without tickets at points where tickets might have been purchased, has resulted and will result in unjust discrimination against interstate commerce.

We further find that said unjust discrimination can and should be removed by establishing, maintaining, and applying a penalty charge of 15 cents against any passenger traveling in interstate commerce within the state of North Carolina, or between a point in the state of North Carolina and a point in another state, who boards a train without a ticket at a point where a ticket might have been purchased, and by establishing, maintaining, and applying a like penalty charge against any passenger traveling in intrastate commerce within the state of North Carolina under similar circumstances.

We further find that the amount of baggage transported by said respondent steam railroads without additional charge for interstate passengers within North Carolina and between points in North Carolina and points in other states is reasonable; that the transportation without additional charge of a greater amount of baggage for passengers traveling in intrastate commerce within North Carolina under a corresponding full fare, or half fare, has resulted and will result in undue prejudice to persons traveling in interstate commerce within the state of North Carolina and between points in North Carolina and points in other states, in undue preference of and advantage to persons traveling intrastate in North Carolina, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by reducing the intrastate baggage allowance to the level of the interstate baggage allowance.

We further find that, whether the aforesaid passenger fares, minimum charges, penalty charges, or baggage allowances pertain to

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transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

The above findings are abundantly supported by the record, but are without prejudice to the right of the authorities of the state of North Carolina or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate fares or charges on the ground that the latter are not related to the interstate fares or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, Commissioner, dissents.

CO I. C. C.

No. 10523.

W. S. GEORGE POTTERY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATLANTIC COAST
LINE RAILROAD COMPANY, ET AL.

Submitted September 13, 1919. Decided December 31, 1920.

Charges collected on two carload shipments of kaolin clay, in bulk, billed from Edgar, Fla., to East Palestine, Ohio, but diverted to Columbus, Ohio, upon a change in billing authorized by the complainant, and thence reconsigned to the original destination, found not unreasonable or otherwise in violation of the act. Complaint dismissed.

L. D. Hawkins for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, WOOLLEY, AND EASTMAN.

BY DIVISION 3:

Complainant, a corporation engaged in the pottery business at East Palestine, Ohio, by complaint filed March 20, 1919, seeks reparation because of alleged unreasonable charges collected on two carload shipments of kaolin clay, in bulk, from Edgar, Fla., to East Palestine in November, 1917, diverted en route to Columbus, Ohio, by reason of an erroneous interpretation of a certain embargo, and thence reconsigned to the original destination.

The two shipments were forwarded from Edgar, on the Atlantic Coast Line, November 27 and 30, 1917, respectively, destined to East Palestine, on billing specifying a rate of \$6.31 per ton of 2,000 pounds and the following routing specified by the shipper: Atlantic Coast Line to Yemassee, S. C.; Charleston & Western Carolina; Carolina, Clinchfield & Ohio; Pennsylvania delivery. These instructions were incomplete for any route, as the Pennsylvania does not connect with the Carolina, Clinchfield & Ohio. The rate specified was a joint rate to which all defendant carriers were parties, applicable via route 22, defined in the tariff as—

via Yemassee, S. C., Charleston & Western Carolina Railway, Spartanburg, S. C., Carolina, Clinchfield & Ohio Railway, Elkhorn City, Ky., Chesapeake & Ohio Railway and connections.

The shipments reached Yemassee on November 30 and December 3, 1917, respectively, but the Charleston & Western Carolina Rail-

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way refused to accept and forward them, because of an embargo issued November 16, 1917, by the Pennsylvania Railroad, as follows:

Extend items 11-C and 11-D of embargo 750-2, Section 1, revised October 27, Pennsylvania Lines West of Pittsburgh affected, by embargoing all carload freight, from any point, when routed via Akron Division and Orrville, Ohio, to points east of Orrville, Ohio.

The Akron division of the Pennsylvania, entirely in Ohio, extends from Columbus through Killbuck, Orrville, and Akron to Hudson, with a stem from Killbuck to Trinway. East Palestine is 74.1 miles east of Orrville and 49.9 miles west of Pittsburgh, Pa., on the eastern division of the Pennsylvania Railroad (Western Lines).

After continued attempts by complainant to secure delivery of the shipments it was asked by the Carolina, Clinchfield & Ohio Railroad, in a telegram dated February 7, 1918, if it would authorize a change of destination to Columbus, but was admonished that—

If destination changed purpose moving cars to Columbus with intention diverting East Palestine after arrival, can not make change on billing.

Complainant at once authorized the proposed change of destination, and the shipments were forwarded from Yemassee on February 8, arriving at Columbus over the Norfolk & Western Railway on February 18. No demurrage was charged for the detention at Yemassee, but a further delay of 10 days occurred at Columbus for which demurrage charges were assessed. The shipments eventually reached East Palestine on March 5, upon reconsignment over the Pennsylvania. The freight charges collected were based upon an applicable combination rate of \$5.81 per ton of 2,000 pounds to Columbus and 12.5 cents per 100 pounds beyond, plus a reconsigning charge of \$5 per car and the demurrage charges, \$24 per car, for the detention at Columbus.

Complainant contends that under the original routing instructions these shipments might have been delivered by the Chesapeake & Ohio, in connection with the Norfolk & Western, to the Pennsylvania at Circleville, Ohio, and handled thence via Trinway, Newcomerstown, and Alliance, Ohio, to destination; and that, although the Columbus-Orrville route was embargoed, that route was open.

The facts developed of record would not support an award of reparation. The Charleston & Western Carolina, although in error in interpreting the Pennsylvania's outstanding embargo as closing all routes by the latter's lines, refused to accept the shipments only because of that embargo and during its pendency. Complainant might have stood upon its right to have the \$6.31 rate protected under the original transportation contract. Instead, it consented to the substitution of a different contract in the face of a warning that the proposed change in destination could not be made the effective means,

of diverting the cars to East Palestine after arrival at Columbus. Under the circumstances complainant thereby assumed liability for all charges applicable over the route of movement.

A further and incidental contention is that the demurrage charges for the detention at Columbus were unlawful in that the Norfolk & Western was at fault in not forwarding the shipments promptly upon arrival at that point. To support this contention complainant introduced in evidence copy of a letter addressed by it to the commercial agent of that line at Pittsburgh, dated February 16, 1918, two days before the cars reached Columbus, the material portions of which follow:

We would ask you, therefore, to take the matter up with Mr. C. H. Brown, Agent at Columbus, Ohio, and advise him that these two cars will be reconsigned before delivery to the Pennsylvania Company.

We do not know whether these two cars will be delivered by your line to the Pennsylvania Company at Columbus or Circleville, Ohio. Therefore, we trust that you will arrange to take care of these two cars as we do not desire to pay any local charges from either Circleville or Columbus, Ohio, as this clay comes through on a commodity rate.

We are leaving this matter entirely with you and trust that you will not disappoint us in seeing that these two cars are rushed through on your lines, and at the same time kindly advise us date of delivery to the Pennsylvania Company.

Assuming that all otherwise essential steps were taken, it is to be observed that this was not an unqualified reconsignment order, the indicated condition being that the local rates to and from Columbus or Circleville should not be charged. As no joint through rate applied via the route of movement, reconsignment could not be had on the terms proposed, and it is the natural inference that the delay resulted from further negotiations. At all events, no explanation having been made of record and the presumption being that the provisions of the tariffs were properly applied, we may not assume that the demurrage did not lawfully accrue.

Reference is made of record to a further route, open when the shipments originated but later embargoed by the Norfolk & Western, via the latter line from Petersburg, Va., as taking a combination rate of \$6.51 per ton. Not only are we unable to check any such rate between the points, but the use of that route was precluded by complainant's specification of the \$6.31 rate in the original billing.

Upon this record we find that the charges assailed were not unreasonable or otherwise in violation of the act, and the complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

The shipments in question reached Yemassee on November 30 and December 3, 1917, respectively, and the routing instructions provided

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that the Charleston & Western Carolina should receive them at this point and transport them to a connection with the Carolina, Clinchfield & Ohio. The Charleston & Western Carolina refused to accept the shipments, upon the ground that an embargo issued by the Pennsylvania would prevent their delivery at final destination at the specified through rate. It appears, however, that this was an erroneous conclusion and that a route was then open which might have been followed without deviation from the routing instructions. Nor, in any event, did the embargo prevent delivery by the Charleston & Western Carolina to the Carolina, Clinchfield & Ohio.

Section 1 of the act to regulate commerce, then in effect, contained the following provision:

* * * the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; *and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor*, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto. [Italics mine.]

Section 15 of the act also provided, in part, as follows:

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route such property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it *shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading.* [Italics mine.]

While in this case the routing instructions of the shipper were incomplete for the entire route, they were complete so far as delivery by the Charleston & Western Carolina to the Carolina, Clinchfield & Ohio was concerned. Section 8 of the act gave to a party damaged

by anything done or omitted to be done by any common carrier subject to the act a right to recover the full amount of the damage, and section 9 authorized any such party to institute proceedings to recover the damage either before the Commission or in court. Also the first paragraph of section 16 read:

That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

The same or similar provisions are now incorporated in the interstate commerce act.

It seems to me that the Charleston & Western Carolina refused without just cause to receive and transport over its railway the two shipments in question, and that by such refusal it violated the act. Upon the evidence of record I think we are also justified in concluding that, but for this violation, the shipments would have gone forward to destination at the through rate specified and that we are justified in awarding reparation representing the difference between the charges upon this basis and those which actually were collected. Nor does it seem to me that the situation is altered by the fact that the shipper, after waiting more than two months, at length gave new instructions on February 7, 1918.

60 I. C. C.

No. 11170.

VIRGINIA-CAROLINA CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted October 18, 1920. Decided December 29, 1920.

Carload rate on tankage, dry, in bulk from Curtis Bay, Md., to Pinners Point, Va., found not unreasonable. Refund of overcharges directed, and complaint dismissed.

T. A. Bosley for complainant.

John F. Finerty, Alex. M. Bull, and John C. Brooke for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing fertilizer at Pinners Point, Va., by its complaint seasonably filed seeks reparation, alleging that the rate charged by defendant on 10 carloads of tankage shipped from Curtis Bay, Md., to Pinners Point, between November 15, 1918, and January 3, 1919, inclusive, was unjust and unreasonable to the extent that it exceeded \$2.30 per net ton, the rate subsequently established. Rates will be stated in amounts per net ton unless otherwise specified, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Curtis Bay is on the Baltimore & Ohio, approximately 7 miles south of Baltimore, Md. Pinners Point is within the Norfolk, Va., switching district. During the period of movement there was a rate of \$2.10 applicable over the Baltimore & Ohio, Potomac Yard, Va., and the Chesapeake & Ohio. The first shipment was tendered for movement over that route, and bills of lading covering other shipments bear the notation, "cheapest route"; but the Chesapeake & Ohio was embargoed during the entire period, and the shipper therefore authorized movement over any available route regardless of the rate. The shipments moved over the Baltimore & Ohio to Wilmington, Del., the Pennsylvania to Delmar, Del., and the New York, Philadelphia & Norfolk beyond, a distance of 308 miles. The applicable rate over this route was the sixth-class rate under the 60 I. C. C.

southern classification of 19 cents per 100 pounds, but charges were collected at a rate of 19.5 cents per 100 pounds. There are, therefore, overcharges which defendant will be expected promptly to refund.

The tankage was manufactured from leather scraps, and was guaranteed to test at least 8 per cent ammonia. It was shipped in bulk, dry, and its value ranged from \$30 to \$60 a ton.

Complainant cited the rate of \$2.10 via Potomac Yard, a distance of 310 miles; a rate of \$2.10 from Baltimore to Pinners Point over the Pennsylvania to Wilmington, thence by the route of movement of these shipments; and referred to the fact that the class rates of the Baltimore & Ohio from Curtis Bay to Norfolk are the same via Wilmington as via Potomac Yard. It therefore contends that the commodity rates should have been the same by both routes. Effective November 20, 1919, the commodity rate on bulk tankage via Potomac Yard was increased to \$2.30, and was made effective over the route of movement of these shipments.

The 19-cent rate under the average loading of the shipments, 38 tons, produced car-mile earnings of 47 cents and ton-mile earnings of 12.3 mills. As indicating the reasonableness of this rate, defendant cited in comparison sixth-class rates from Curtis Bay to points in New York and Pennsylvania, ranging from 18.5 cents for a distance of 296 miles, producing ton-mile revenue of 12.5 mills, to 20 cents for a distance of 322 miles, producing ton-mile revenue of 12.4 mills. Defendant also cited commodity rates on tankage, in carloads, from Curtis Bay to certain destinations to which shipments had been recently made. The distances to these destinations range from 46 to 553 miles, the rates from \$1.60 to \$5.80, the car-mile earnings from \$1.322 to 36.4 cents, and the ton-mile earnings from 34.8 to 9.6 mills. These commodity rates include the rate to Lynchburg, Va., for 358 miles over the Norfolk & Western, 210 miles over the Southern, of \$3.80 per ton; to Richmond, Va., 154 miles, \$2.30 per ton; to Charlestown, W. Va., 91 miles, \$2.30. Another of defendant's exhibits shows commodity rates on tankage, in carloads, from Curtis Bay to nine points in New York, Pennsylvania, and Virginia, which produce car-mile earnings under a loading of 38 tons, ranging from 39.79 cents to 68.2 cents, and ton-mile earnings of from 10.5 to 18 mills.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

601. C. C.

No. 11180.

EMPIRE REFINERIES, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted October 13, 1920. Decided December 29, 1920.

Rate on kerosene, in tank-car loads, from Cushing, Okla., to Vaughn, N. Mex.,
found not unreasonable. Complaint dismissed.

H. O. Caster for complainant.

S. W. Hayes for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in refining crude petroleum at Cushing, Okla. By complaint filed January 26, 1920, it alleges that the rate of 80 cents per 100 pounds charged by defendants on a tank-car load of refined oil shipped January 2, 1918, from Cushing to Vaughn, N. Mex., was unjust and unreasonable to the extent that it exceeded a rate of 42 cents in effect via another route. We are asked to award reparation and to establish a reasonable rate for the future. Rates will be stated in cents per 100 pounds.

The shipment, weighing 54,437 pounds, moved as routed by complainant over the lines of the Atchison, Topeka & Santa Fe and the Panhandle & Santa Fe, hereinafter collectively called the Santa Fe, a distance of 645 miles. Charges aggregating \$435.50 were collected at the applicable commodity rate of 80 cents. A commodity rate of 42 cents applied from Cushing over the Missouri, Kansas & Texas to Oklahoma City, Okla., the Chicago, Rock Island & Pacific to Tucumcari, N. Mex., and the El Paso & Southwestern to Vaughn, a distance of 549 miles. Under that rate a switching delivery by the Santa Fe was available. The shipment should have moved by the latter route, but by complainant's mistake the longer route of the Santa Fe was selected.

Vaughn is grouped with seven other destinations in New Mexico to which the 80-cent rate applied from a group of 37 Kansas and Oklahoma refining and shipping points on the Santa Fe and con-

60 L. C. C.

necting lines. The average of the distances to all stations in the one group from all stations in the other is given as 757 miles. The 42-cent rate applied from a group of about 115 Kansas and Oklahoma stations on the Chicago, Rock Island & Pacific and connecting lines to seven groups in New Mexico, for distances between representative points shown as averaging 694 miles. Cushing is on the southern edge, and Vaughn on the northern, of their respective groups. The haul therefore does not represent the average haul under the group rate.

Defendants explain at some length the establishment of the 42-cent rate to meet at El Paso, Tex., and intermediate points in New Mexico, the level of intrastate rates prescribed by the Railroad Commission of Texas for application from refineries in Texas. They briefly refer to a formerly proposed readjustment of rates from the Kansas-Oklahoma group in the direction of reduction of the rate assailed, recommended by appropriate freight traffic committees during the period of federal control, and concede that some readjustment is needed. But they insist that the 80-cent rate itself was not unreasonable and object to the proposed detachment of the particular points of origin and destination in this case from their respective groups. We think this objection is well founded.

The record does not afford sufficient basis for fixing a rate for the future, in view of the group adjustment. The group rate as such is not in issue.

Upon this record we find that the rate assailed was not unjust or unreasonable. The complaint will be dismissed.

60 I. C. C.

No. 10555.

LAKE PARK REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, ET AL.

Submitted August 25, 1919. Decided December 29, 1920.

Rate charged on petroleum fuel oil, in tank-car loads, from Ponca City, Okla., to Hutchinson Station, Ill., in February and March, 1918, found not to have been unreasonable. Present rate found unreasonable and reasonable maximum rate prescribed for the future.

Clifford Thorne, F. W. Lehman, jr., and Walter R. Scott for complainant.

J. N. Davis, A. P. Humburg, and R. G. Merrick for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Complainant, a corporation engaged in producing and refining petroleum and its products at Ponca City, Okla., alleges that the rate charged on 13 tank-car loads of petroleum fuel oil shipped during February and March, 1918, from Ponca City to Hutchinson Station, Ill., within the switching district of Chicago, was unjust and unreasonable. An award of reparation and the establishment of a reasonable rate for the future are asked. Rates will be stated in cents per 100 pounds, and, except as otherwise noted, are those in effect prior to the increases under *Increased Rates, 1920*, 58 I. C. C., 220.

Ponca City is on the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, 269 miles southwest of Kansas City, Mo., in the midcontinent oil field. The shipments, aggregating 831,720 pounds, moved as routed by complainant, Santa Fe to Kansas City, and Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee, beyond. Charges in the sum of \$2,078.26, exclusive of war tax, were collected on 831,300 pounds at a commodity rate of 25 cents, which also applied on gasoline, kerosene, and other refined petroleum oils. The shipments were undercharged \$1.05.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, decided August 13, 1915, we had under consideration the rates on petroleum oil and its products from the midcontinent field and found that for the future 30 I. C. C.

a reasonable maximum rate on refined oils to Chicago would be 25 cents, and on low-grade oils 20 cents. No order was issued, but we said that if the carriers failed to establish on or before November 1, 1915, the rate adjustment therein found reasonable the matter might again be called to our attention. Most of the carriers defendant complied with our finding, but the Santa Fe in connection with the Milwaukee continued to maintain a rate of 25 cents on both refined and low-grade oils from the midcontinent refineries to Chicago.

On June 25, 1918, rates on oil were increased 25 per cent under general order No. 28 of the Director General of Railroads, making the rate over most of the routes from Ponca City to Chicago 31.5 cents on refined oil and 25 cents on fuel oil. Over the route of movement the refined-oil basis of rates was still maintained on fuel oil. On July 25, 1918, the 31.5-cent rate was reduced to 29.5 cents and the 25-cent rate to 24.5 cents. These rates are still in effect, save for the increases under *Increased Rates, 1920, supra*, the higher rate being continued on fuel oil over the route of movement.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 20 cents, the rate found reasonable for low-grade oils in *Midcontinent Oil Rates, supra*. All the principal oil-producing points in Oklahoma and Kansas take the same rates to Chicago, St. Louis, Mo., and the greater part of western trunk line territory. When the shipments moved, a rate of 20 cents applied on fuel oil from Ponca City to Chicago over the Santa Fe direct, 723 miles, and over various other lines for distances as great as 840 miles. The average distance from the Oklahoma group to Chicago, as found in the case just cited, is about 704 miles, and from Ponca City to Chicago, by way of the lines over which the 20-cent rate applied, it is 786 miles. The distance from Ponca City to Chicago over the route of movement, 767 miles, is about 11 per cent greater than the average distance from all Oklahoma points to Chicago, but considerably shorter than the distance over several of the routes having the 20-cent rate.

When the shipments moved, a rate of 17.5 cents applied to New Orleans, La., from Ponca City, 847 miles; Tulsa, Okla., 752 miles; Cushing, Okla., 795 miles; and from Muskogee, Okla., 699 miles. This rate has since been increased to 22 cents. Similar comparisons are made with other rates in the same general territory. The rate assailed yielded 6.52 mills per ton-mile. Those mentioned in comparison yielded from about 5 to slightly over 6 mills per ton-mile.

Complainant further contends that the general and customary basis for making rates on petroleum oil throughout the western territory is to apply lower rates on that commodity than on refined

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oil between the same points; that the differences in value and weight per gallon and in other characteristics justify lower rates; and that the rate on fuel oil should have been 5 cents less than the rate contemporaneously applicable on refined oil. This basis is asked for the future.

The evidence is, we think, convincing that in 1915, when *Midcontinent Oil Rates*, *supra*, was decided, a rate of 20 cents on low-grade oils, 5 cents less than the rate on refined oils, would have been reasonable over the routes in question. Defendants, however, urge that the conditions which justified the Director General of Railroads in increasing the rates under general order No. 28 were present at the time the shipments moved, in February and March, 1918, in the same manner and to the same degree as when the order was entered. There is basis for this contention. The wage increases, which were a principal reason for general order No. 28, were made retroactive to January 1, 1918, and the increased prices of materials, which were a further reason, likewise prevailed in the first six months of that year. Under that order the 20-cent rate found reasonable in *Midcontinent Oil Rates* was increased, as stated, to 25 cents, the rate herein assailed. Nor does it follow that because the same rate applied over the route of movement on refined and on fuel oil it was too high for application to the latter. Moreover, the mere fact that under a general readjustment the 25-cent rate was subsequently reduced to 24.5 cents does not afford a basis for finding the former rate unreasonable. *Atlantic Refining Co. v. Director General*, 58 I. C. C., 46.

Upon the record we find that the rate assailed was not unreasonable during the period of movement, but that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed 24.5 cents per 100 pounds, subject to the increases authorized in *Increased Rates, 1920*, *supra*.

An appropriate order will be entered.

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No. 11151.

STANDARD ASPHALT & REFINING COMPANY,
INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, TEXAS & PACIFIC
RAILWAY COMPANY, ET AL.

Submitted June 10, 1920. Decided December 29, 1920.

Rates on crude petroleum, in tank-car loads, from Plaquemine and New Orleans, La., to Independence, Kans., found not unreasonable or unduly prejudicial. Complaint dismissed.

H. O. Caster for complainant.

H. G. Herbel for defendants.

REPORT OF THE COMMISSION.

DIVISION 3; COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation engaged in the manufacture and sale of crude petroleum products at Independence, Kans., alleges by complaint filed January 13, 1920, that the rates assessed and collected on three tank-car loads of crude petroleum, one of which was shipped November 8, 1917, from New Orleans, La., and the other two January 25, 1919, from Plaquemine, La., to Independence, were and are unjust, unreasonable, and unduly prejudicial. The prayer is for reparation and the establishment of reasonable rates for the future. Rates will be stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments from Plaquemine weighed 120,790 pounds, and moved over the Texas & Pacific to Ferriday, La., and thence to destination over the Missouri Pacific. Freight charges thereon were collected in the sum of \$634.15, at the applicable combination rate of 52.5 cents, composed of commodity rates of 18 cents to St. Louis and 30 cents beyond, plus 4.5 cents, the specific increase in petroleum rates made effective August 26, 1918, under authority of the Director General of Railroads.

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The shipment from New Orleans was delivered unrouted to the Illinois Central and moved over that road apparently to East St. Louis, Ill., and thence to destination over the Missouri Pacific. Charges were collected at a rate of 61 cents. The Illinois Central is not named as a defendant, and no evidence was adduced with respect to the reasonableness of the rate over that route. That shipment will not be further considered.

Crude petroleum was and is rated fifth class in the governing western classification. Prior to August 26, 1918, the applicable rate on crude petroleum from New Orleans to Independence over the lines of defendants was a joint fifth-class rate, but on that date an amount equal to the fifth-class rate in effect June 24, 1918, plus 4.5 cents, was published as a specific commodity rate. The resulting rate, 65.5 cents, was in effect until the increase on August 26, 1920, authorized in *Increased Rates, 1920, supra*.

Independence is about 178 miles southwest of Kansas City, Mo., and complainant there operates an oil refinery which is equipped for the reduction of asphalt from crude petroleum. Successful operation of this refinery requires the use of crude petroleum having a heavy asphaltic base. It is testified that crude petroleum obtainable in Kansas and Oklahoma does not now meet this requirement, although much of it formerly did, and that in seeking another source of supply complainant has found that the coastal oil regions of Texas and Louisiana produce the grade desired.

Plaquemine is a local station on the Texas & Pacific, about 85 miles west of New Orleans, and takes New Orleans rates on traffic to a number of northern destinations, including St. Louis and Kansas City but not including Independence.

Complainant contends that the rates assailed were and are not only unreasonable, but unduly prejudicial as compared with the rates from the same points of origin to Kansas City. There is testimony that it competes with refineries at Kansas City in the sale of petroleum products, but its witness was unable to show that any shipments of crude petroleum have moved from either New Orleans or Plaquemine to Kansas City, and knew of no Kansas City refinery engaged in the reduction of petroleum containing the asphaltic base. The allegation of undue prejudice is not sustained.

Comparative rates, distances, and ton-mile earnings over the lines of defendants follow:

From—	To—	Distance.	Rate.	Ton-mile earnings
New Orleans.....	Independence.....	Miles. 794	Cents. 65.5	Miles. 16.5
Plaquemine.....	do.....	708	62.5	14.5
New Orleans.....	Kansas City.....	970	30.5	8.14
Plaquemine.....	do.....	884	30.5	8.03

The direct route to Independence from New Orleans and Plaquemine is over the lines of defendants. To Kansas City the direct or short line from New Orleans is over the Louisiana Railway & Navigation to Shreveport and the Kansas City Southern beyond, 867 miles; and, from Plaquemine, over the Texas & Pacific to Shreveport and the Kansas City Southern beyond, 802 miles. The 39.5-cent rate to Kansas City also applies over these routes from New Orleans and Plaquemine.

The ton-mile earnings under the rates assailed are contrasted with 9.47 mills, the average ton-mile earnings of all class-1 federal-controlled roads for 1919. The Kansas City rate, if applied from New Orleans and Plaquemine to Independence over defendants' lines, would yield ton-mile earnings of 9.9 and 11.15 mills, respectively.

Complainant also cites rates on crude petroleum from New Orleans of 22.5 cents to St. Louis, 709 miles; 38 cents to Detroit, Mich., 1,024 miles; and 27.5 cents to Chicago, Ill., 921 miles; yielding ton-mile earnings of 6.34, 7.4, and 5.97 mills, respectively. These rates apply from Plaquemine also. It is not shown whether there is any movement on these rates.

The return empty movement of tank cars used in the transportation of crude petroleum generally is 100 per cent. Complainant asserts that it makes shipments of fuel oil from Independence to sugar refineries in Louisiana which would afford for cars from New Orleans and Plaquemine return loads to an extent sufficient to reduce the empty return movement from its plant to approximately 66½ per cent.

For defendants it is testified that there appears to have been no regular movement of crude petroleum from New Orleans or Plaquemine to either Kansas City or Independence. They call attention to the scale of class rates prescribed by the Commission in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, for application from New Orleans to Kansas City, under which the fifth-class rate is 88 cents. On February 16, 1920, defendants established this scale of class rates from New Orleans to both Kansas City and Independence. The fifth-class rates thereby superseded were 47.5 cents to Kansas City and 76.5 cents to Independence. In the same case there is a further finding that rates on a number of commodities, not including crude petroleum, from New Orleans to certain Kansas points were unduly prejudicial to those points as related to the rates on the same commodities from New Orleans to Kansas City, and it was ordered that the undue prejudice be removed. The order was to continue in force only during such time as the lines under federal control were operated as a single system

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and not in competition. Federal control of carriers terminated February 29, 1920, and as of March 1, 1920, the order became inoperative. The prescribed adjustment of the commodity rates has not been made. Defendants herein are, however, of the opinion that the adjustment will be effected in order to bring the commodity rates into closer harmony with the established class rates, and ask that they be left free to change the Kansas City rate on crude petroleum as a part of such adjustment.

We find that the rates collected were not and are not unreasonable or unduly prejudicial. The complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

While I agree that the evidence is not sufficient to justify a conclusion that the rates assailed were or are unreasonable, I think that undue prejudice has been shown. By short-line routes Kansas City is 73 miles more distant than Independence from New Orleans, and 94 miles more distant from Plaquemine. The class rates from New Orleans are the same to both points, as are the class rates from Plaquemine. Crude oil is shipped from both New Orleans and Plaquemine; Kansas City and Independence both have refineries; and no good reason has been shown why these crude-oil rates should be greater to one point than to the other. While it does not appear that any refinery in Kansas City is now engaged in the reduction of the variety of crude oil which is shipped from New Orleans and Plaquemine, I am not persuaded that this is a sufficient reason for withholding a finding of undue prejudice. A wrong relationship which threatens harm is, it seems to me, unduly prejudicial. Surely we are not required to wait until harm actually results before correcting such a relationship.

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No. 11831.

UTAH RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE PASSENGER FARES
OF THE DENVER & RIO GRANDE RAILROAD COMPANY
AND OTHER CARRIERS BETWEEN POINTS IN THE
STATE OF UTAH.

Submitted December 13, 1920. Decided February 12, 1921.

1. Present intrastate passenger fares of steam railroads in Utah found to subject interstate and foreign commerce to unjust discrimination.
2. Present intrastate rates on coal and on ore not found unreasonably preferential, unduly prejudicial, or unjustly discriminatory.

Alfred P. Thom, H. A. Scandrett, Geo. H. Smith, Dana T. Smith, William D. Riter, Bradley & Pischel, DeVine, Stine & Gwilliam, Bagley, Fabian, Clendenin & Judd, and J. G. McMurry for steam carriers.

John E. Benton for 42 state commissions.

Joshua Greenwood, H. H. Blood, and Warren Stoutnour for Public Utilities Commission of Utah.

W. H. Folland for Salt Lake City, Utah.

DeVine, Stine & Gwilliam for Central Coal & Coke Company, Gunn Quealy Coal Company, Colony Coal Company, Megeath Coal Company, Superior Rock Springs Coal Company, Premier Coal Company, Lion Coal Company, and Kemmerer Coal Company; *W. S. McCarthy* and *H. W. Prickett* for Chamber of Commerce and Commercial Club of Salt Lake City, Standard Coal Company and other Utah coal operators, and Chief Consolidated Mining Company and other Utah metal mine operators; *Walter Fitch, sr.*, for Chief Consolidated Mining Company; and *Paul Williams* for Ontario Silver Mining Company and Nail Driver Mining Company.

B. B. Cain for electric lines, members of American Short Line Railroad Association.

REPORT OF THE COMMISSION.

FORD, *Commissioner*:

This proceeding presents the question whether certain passenger fares and the rates on coal and ore required by the Public Utilities Commission of Utah and at present applied to intrastate traffic in Utah are unlawful in their relation to the rates, fares, and charges applicable to interstate commerce.

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In *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to as Ex Parte 74, this Commission, under authority conferred upon it by the interstate commerce act, divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific. These groups, in our view, represent a proper division of the country for the purposes of estimating valuation, and for making a general increase in transportation charges. We found that for freight services the carriers might increase their charges in various percentages according to the several groups. In the mountain-Pacific group, which includes Utah, the increase we allowed was 25 per cent. For passenger service, so far as is necessary to be stated for the purposes of this report, we approved an increase in fares throughout the country of 20 per cent. These increases became effective, interstate, August 26, 1920.

In the meantime the carriers had pending before the Utah commission an application for the same measure of increases intrastate as we permitted interstate. By a decision rendered August 24, 1920, the state commission granted the application, except that no increases were allowed in the rates on coal or on ore, or in passenger fares on steam railroads that were in excess of 3 cents per mile, or in any passenger fares of electric lines. Wherever the intrastate passenger fares were in excess of 3 cents per mile the intrastate excess-baggage charges were not increased, because they are based on a percentage of the passenger fare. Subsequently the Utah carriers subject to our jurisdiction in a petition filed with us complained of the action of the state commission, alleging that undue prejudice and unjust discrimination against interstate commerce would result, and we thereupon instituted this proceeding of investigation.

In the proceeding before the state commission the carriers refused to deal with individual rates or individual commodities, contending that it was a revenue and not a rate case. The state commission held that without a showing that the coal and ore rates in effect were on a proper level to form the basis of increases it should deny the carriers' application as to these rates; that the evidence of the shippers showed that the rates on coal and ore were probably high enough and that as to ore the increases sought would result in the closing of a number of mines, and therefore curtail, rather than increase, the revenues of the carriers; and furthermore that the way was left open for the carriers to apply for proper increases in subsequent proceedings involving individual rates. The increases allowed by the state commission became effective on or about September 1, 1920.

Most of the intrastate fares of the steam railroads in Utah, except between Salt Lake City and Ogden and in that vicinity, are already
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in excess of 3 cents, being generally on the basis of 4 cents or more per mile, and therefore under the state commission's order were not increased. Most of the intrastate passenger traffic in the excepted district is handled by electric lines, which were allowed no increases in fares.

Intrastate fares are being used to defeat interstate fares. For instance, the through interstate fare of \$16.56, from Grand Junction, Colo., to Salt Lake City, Utah, may be defeated by the passenger purchasing a ticket from Grand Junction to Westwater, Utah, at the interstate fare of \$1.98, and then purchasing a ticket from Westwater to Salt Lake City at the intrastate fare of \$12.20, making the total charge \$14.18, or \$2.38 less than the through interstate fare. The record shows numerous instances in which substantial savings can be effected by resort to this device. The practice is common and grows as the public becomes informed of its advantages. The evidence on this point is very similar to that referred to in *Rates, Fares, and Charges of N. Y. O. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350; *Ohio Rates, Fares, and Charges*, 60 I. C. C., 78, and similar recent cases in which we required the intrastate fares to be increased to and maintained at the interstate basis. The Utah interests point out that some of the intrastate factors used in the examples given of record are higher per mile than the interstate factors, and say that it is therefore not established that the intrastate fares are injurious in their effect upon interstate commerce. However, the combinations result in the defeat of the interstate fares sanctioned by us as reasonable in Ex Parte 74, and therefore unjustly discriminate against interstate commerce.

Practically all trains carry both intrastate and interstate passengers. The service and accommodations afforded passengers are the same, regardless of whether they are traveling intrastate or interstate, but the intrastate passenger is not charged a 20 per cent increase in fare or the resulting increase in the excess-baggage charge. There is little or no evidence in the record as to the relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, or club-car charges, and no finding will be made with respect thereto.

In Ex Parte 74 we reached the following conclusions respecting the application of the electric lines:

We conclude that the freight rates of electric lines may be increased by the same percentages as are approved herein for trunk lines in the same territory. This is not to be construed as an expression of disapproval of increases made or proposed in the regular manner in the passenger fares of electric lines.

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The electric lines ask that they be included in any finding of unjust discrimination that may be made, but since we did not make any affirmative finding in Ex Parte 74 that the electric lines' interstate fares with a 20 per cent increase would be reasonable, we shall not, upon the present record, make any finding respecting the electric lines' fares. Electric lines' fares were also excluded from our findings in *Intrastate Rates within Illinois, supra*, and similar cases.

Coal is produced in the Castle Gate district on the Denver & Rio Grande in the east-central part of the state. The principal intrastate movement is northwesterly to Salt Lake City, Ogden, Murray, and Garfield, which are in the vicinity of Great Salt Lake, and comprise what we may call the Salt Lake group. At these points the Castle Gate coal competes with coal which comes west via the Union Pacific system from the Rock Springs district in Wyoming. Prior to August 26, 1920, the rates to these consuming points were the same from the Rock Springs district as from the Castle Gate district, viz, on steam or slack coal, for instance, \$1.80 per ton, but on the date named the rates from the Rock Springs district were increased 25 per cent, while no increases were made in the rates from the Castle Gate district. As a result the blanket that previously existed on coal rates was broken and a differential of 45 cents was put in against the Rock Springs district. Utah interests urged that this differential is not unreasonable in view of the difference in mileage as shown by the following table:

From—	To Ogden.	To Salt Lake.	To Garfield.
	Miles.	Miles.	Miles.
Rock Springs.....	191	227	241
Castle Gate.....	146	111	126
Difference.....	45	116	116

The principal movement is to points where the distance favors the Castle Gate operators by about 116 miles.

The Rock Springs operators and the carriers offered evidence to the effect that the operating conditions are less favorable from the Castle Gate district than from the Rock Springs district, and they take the position that the less favorable operating conditions from the Castle Gate district offset the shorter haul. The Castle Gate operators sought to prove the contrary. The Rock Springs operators have an advantage of 37.5 cents over the Castle Gate operators on coal going to the sugar-refinery territory in Idaho north of Pocatello, although the difference in haul in favor of the Rock Springs district is only 22 miles. The Rock Springs operators have rates to Nebraska, 60 I. C. C.

and Kansas points, but the Castle Gate operators have not. To points west of Ogden there was an equality of rates from both districts, in disregard of the longer haul on movement from the Rock Springs district.

The interested parties compare the intrastate rates in Utah with the rates in effect at other places in the west to prove their respective contentions as to the reasonableness of the rates. A comparison of rates submitted by the Utah operators shows that the intrastate rates in Utah are higher, without the 25 per cent increase, than are the intrastate rates in Montana, which have been subjected to the 25 per cent increase. The coal produced in these two states does not differ materially in thermal units. There is some evidence of record as to the transportation difficulties encountered in moving coal in both these states. The carriers compare the Utah intrastate rates with rates for similar distances in and between other western states, namely, Wyoming, Idaho, Colorado, Kansas, and New Mexico. The rates selected apply from and to large as well as small points and are generally higher than apply intrastate in Utah. It should be remembered in considering all of these comparisons of record that the rates on coal generally apply from and to large groups or blankets and are not based primarily on distance, and hence it is difficult if not impracticable to obtain data that have substantial probative value. But considered with respect to actual length of haul the Utah coal rates appear to be reasonably high.

There is a large production of ores at various points in Utah. Except for the copper ore mined by the Utah Copper Company,¹ with which we are not here concerned, the principal production is of silver-lead ore which is moved chiefly via the Denver & Rio Grande or the Los Angeles & Salt Lake Railroad to smelters at Murray and other points in the vicinity of Salt Lake City. The bullion is shipped thence to the east. The ore producers are before us asking that we adopt the state commission's conclusions that no increases should be allowed in the intrastate rates on ore. They seek to show that as a practical matter they can not stand any increase in their rates, that they are now bearing their full share of the transportation burden, and that therefore there is no unjust discrimination against interstate commerce. Some of their ore is of low grade. Their costs for labor, materials, and supplies have been constantly rising, and the freight rates on their materials and supplies and on their ore and bullion have been substantially increased during the last few years. The smelters have increased the treatment

¹ The Utah Copper Company has a mine at Bingham, Utah, and moves its ore a short distance via the Bingham & Garfield Railroad to its mills at Garfield. This road is owned by the Utah Copper Company and does not desire to increase its rates. Apparently it has no direct interest in this proceeding.

charges and have given notice that further increase will probably become necessary very soon, on account of increases in rates on coal and other items of expense.

On the other hand, the ore producers can not increase the selling price of their metals. All the silver they produce is taken by the United States government, and the price since May, 1920, has been fixed by the Pittman act, 40 Stat. L., 535, at \$1 per ounce. Prior to May the price was considerably lower. The Pittman act, however, by providing a market at an increased price for domestic silver, has helped producers to continue operations and to keep up their organizations. Imported silver, used principally by manufacturers of silverware, was selling for about 80 cents per ounce at the time of the hearing, and has since sold as low as 62 cents. In view of these conditions mining operations are declining in extent and value. The movement of ore in Utah fell from 2,816,481 tons in 1917 to 2,545,018 tons in 1918 and to 1,206,723 tons in 1919. These figures are exclusive of the Utah Copper Company's tonnage. About 140 operators whose shipments in 1917 amounted to over a million tons have suspended business. Had it not been for the Pittman act, others would probably have had to close down. Actual figures as to operating costs submitted by producers, large and small, indicate that the proceeds from the sale of their metals approximate the present costs of production. While the bases for these figures are open to criticism, the evidence in general is rather convincing that if the 25 per cent increase is applied most of the ore producers that continue operations will have to do so either at a loss or at very little profit. The indications are that many of them will close down and stop shipping until conditions are more favorable. Generally speaking, the larger companies and those having a relatively heavy silver production will be better able to survive than the others. As a temporary policy, some of the operators have undertaken to cope with the situation by shipping only their higher grade ores, but this is not generally practicable and it is said to mean unscientific development.

The carriers' position is that the general increase should be permitted and the individual instances in which certain operators or certain grades of ore can not bear the greater burden be left for subsequent treatment. They say that they would promptly meet the shippers in conference and readjust the rates so far as that may be necessary, considering each case on its merits. Incidentally, one of the carriers' principal witnesses conceded that the lower grades of ore, valued at \$15 per ton or less, probably in many instances could not stand a 25 per cent increase. Attention is called to the fact that the Colorado state commission allowed a 25 per cent increase on ore which became effective September 1, but within a few weeks, after

conference with mine operators, the carriers reduced the ore rates to the previously existing basis or made other readjustments wherever the figures submitted by the operators indicated that to be necessary to permit the traffic to move. The carriers say that this method of dealing with the situation proved to be satisfactory in Colorado and that there is no reason why it should not be followed in Utah.

The distances from the Utah mines to the smelters, the latter being in the vicinity of Salt Lake City, range from 10 to 206 miles. The average haul is between 60 and 70 miles. The average rate is about \$2.30 per ton or 11.5 cents per 100 pounds. The average load per car is over 53 tons and the average revenue per car over \$120. The average revenue per car-mile is about \$1.82 and per ton-mile, 34 mills. The average freight charge was about \$171 per car, about \$2.67 per car-mile, and nearly 50 mills per ton-mile.

The record contains rate comparisons and other data bearing on the intrinsic propriety of the ore rates, but in view of what is conceded by all parties to this proceeding with respect to actual conditions it is scarcely worth while going into details of this nature.

In Ex Parte 74 it was recognized by us and it was conceded by the carriers that there might be situations in which a percentage increase would be inappropriate and which hence might require special treatment. The Utah coal and ore rates appear to present a situation of this character. In authorizing the percentage increase we noted that it was stated that this method was "on the whole the fairest to all interests by distributing the burden in proportion to the haul." But no such proportion as this observation contemplated is visible in the Utah situation with respect to these rates. To gain access to markets has been evidently the controlling principle of rate making, resulting in adjustments that to a notable extent disregard length of haul.

It appears in the record that points outside of Utah have been blanketed with points inside of Utah on both coal and ore rates, and it has been urged that unless the intrastate rates are advanced in an amount correspondent to the advance authorized interstate, the former relationship will be disrupted and interstate commerce will be discriminated against. But the former parities were the result of voluntary adjustments made by the carriers themselves, and they are now subject to no more restraint in the exercise of their discretion in this matter than they were heretofore. In Ex Parte 74 we noted that the carriers "indicate their willingness, where necessary, to revise rates to restore, in so far as is deemed practicable, existing recognized relationships and differentials."

We are of opinion and find that the increases made by the respondent steam railroads under Ex Parte 74 relating to passenger

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fares and baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation within the group considered in this proceeding, and that the failure of said respondents to increase their standard intrastate fares and charges correspondingly within the state of Utah has resulted and will result in intrastate fares and charges lower than the corresponding interstate fares and charges and in unjust discrimination against interstate commerce.

We further find that said unjust discrimination can and should be removed by making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid in interstate passenger fares and excess-baggage charges, and now in effect.

We further find that whether the aforesaid passenger fares or excess-baggage charges pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by said respondents under substantially similar circumstances and conditions.

We do not find that the intrastate rates on coal or on ore are unreasonably preferential, unduly prejudicial, or unjustly discriminatory against interstate commerce.

These findings are without prejudice to the right of the authorities of the state of Utah or of other parties in interest to apply in the proper manner for a modification of our findings and order, as to any individual intrastate rate, fare, or charge, on the ground that it does not contravene the provisions of the interstate commerce act.

Schedules of fares and charges in compliance with the order herein may be made effective upon five days' notice.

An appropriate order will be entered.

HALL, *Commissioner*, concurring:

I am in accord with the foregoing report except as to ore. Rates on ores of the precious metals are usually graded according to value as determined at destination. The report recognizes that some of the ore is of low grade, but does not distinguish in the findings between such ores and ores of higher grade. It may be that the interstate rates, as increased, on the lower grades are too high and should be reduced to the level of the present intrastate rates. It may be that the intrastate rates on the higher grades might well take the increase accorded in interstate rates by Ex Parte 74. No good reason appears why the interstate and intrastate rates should be on different levels, or why they should not bear their fair share of the common transportation burdens. The expenses of the carriers have increased as well as the expenses of mine operators and smelters.

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Some of the respondents are largely dependent upon movements of coal and ore for their revenue. It seems to me preferable to reserve rates on ore from the present decision and look into the matter further with a view to determining what would be just, reasonable, and nondiscriminatory rates on the various grades of ore in order to insure a proper rate relationship, interstate and intrastate. But I venture to hope that the carriers and shippers will be stimulated by this decision to work out such a solution for themselves in a way to meet with approval from the state and federal commissions.

EASTMAN, *Commissioner*, dissents.

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No. 10861.

NATCHEZ CHAMBER OF COMMERCE

v.

DIRECTOR GENERAL, ILLINOIS CENTRAL RAILROAD
COMPANY, ET AL.

Submitted May 15, 1920. Decided December 21, 1920.

Practice of certain defendants in loading and unloading carload freight, other than export and import freight, into or out of warehouses at New Orleans, La., without charge, while refusing to perform such service at Natchez and Vicksburg, Miss., and Baton Rouge, La., found to be unduly preferential of shippers at New Orleans and unduly prejudicial to their competitors at Natchez, Vicksburg, and Baton Rouge. Undue prejudice ordered removed.

B. F. Martin and George P. Chamberlain for complainant.

Charles J. Rixey, jr., D. Lynch Younger, and A. P. Humburg for defendants.

Carl Giessow and Edgar Moulton for New Orleans Joint Traffic Bureau; *Frank H. Andrews* for Vicksburg Board of Trade; and *John B. Rucker* for Traffic Bureau of Baton Rouge Chamber of Commerce, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS HALL, DANIELS, AND WOOLLEY.

By DIVISION 2:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by the New Orleans Joint Traffic Bureau, intervener, and the case was orally argued before us.

By its complaint filed in behalf of the jobbers, manufacturers, and distributors of Natchez, Miss., complainant alleges that the loading and unloading of carload freight by defendants into and out of the carriers' warehouses at New Orleans, La., without charge to the New Orleans shippers, "while similar privileges are not accorded shippers of like commodities in car lots, at Natchez," is unjustly discriminatory against Natchez shippers and unduly preferential of shippers located at New Orleans. The object of the complaint is to secure "uniform practices at New Orleans, La., and Natchez, Miss., with respect to terminal rules and practices covering the handling of carload freight other than export and import." Upon the hearing the New Orleans Joint Traffic Bureau, in behalf of the com-

mercial interests of New Orleans, intervened in support of the lawfulness of, and in opposition to any change in, defendants' rules and practices at that point; and the Vicksburg Board of Trade and the Traffic Bureau of the Baton Rouge Chamber of Commerce tendered intervening petitions asking the same relief with respect to Vicksburg, Miss., and Baton Rouge, La., as that sought by complainant. The two last-mentioned petitions were objected to by the New Orleans Joint Traffic Bureau upon the ground that they sought to broaden the issues raised by the complaint. The objection is not sustained. As the relation between New Orleans and Natchez is similar to that between New Orleans and Vicksburg and Baton Rouge, reference herein to Natchez will be understood to include Vicksburg and Baton Rouge. The New Orleans Joint Traffic Bureau will be referred to as intervener.

A rule of the consolidated classification requires, and the rules of the several classifications for many years have required, that shippers load and unload carload freight. It is testified that, except at New Orleans, this rule generally applies at points in the south, including Natchez. All carload freight at the latter point is loaded or unloaded by the shipper or consignee on industrial sidings or team tracks. The carriers load and unload carload freight only on exceptional occasions at points other than New Orleans, principally in order to secure the prompt release of equipment. At New Orleans the loading and unloading of carload freight is governed by the terminal rules of the individual lines. The rule of the Illinois Central and Yazoo & Mississippi Valley railroads, which may be taken as typical, provides:

Owners will be required to load and unload carload shipments, except that carriers reserve the right to load and unload at their convenience.

At New Orleans a charge is authorized by the tariffs for the loading and unloading of certain commodities, but apparently applies only in connection with shipments handled in switch movement or reconsigned; and the evidence in the main is confined to the practices respecting commodities loaded and unloaded by the carriers without charge. Thirty-one warehouses and also extensive platforms owned or leased by the carriers are used in receiving and delivering carload freight. Numerous commodities, when handled through these warehouses, are loaded and unloaded by the carrier without charge, coffee, sugar, rice, molasses, sisal, burlap, and bagging being the principal commodities loaded, and sugar, rice, molasses, flour, canned goods, sacked grain, furniture, fruits, and vegetables the principal commodities unloaded.

The merchants of Natchez and New Orleans are in active competition in the purchase or sale of most of these commodities in the adjoining territory. The distribution, which is made both in carload

and less-than-carload lots, is mainly from stock shipped into these respective points in carloads, and complainant contends that while the Natchez shippers must meet the unloading expense on incoming shipments, and likewise the loading expense on carload traffic shipped out, and include these costs in their selling prices, the sale prices of the New Orleans shippers reflect neither unloading nor loading costs. It is also testified that private sidetracks and warehouses for re-sorting and handling are indispensable to the successful wholesale distributor of certain of these commodities, principally groceries; and while many of the Natchez merchants have invested large amounts of capital for the construction and maintenance of such facilities, the merchants of New Orleans, by reason of the carriers' rules and practices at that point, are relieved of the necessity of providing similar facilities. It is further pointed out that the shippers at these respective points often effect pooling arrangements under which a shipment is consigned to one of the parties, who takes delivery and turns over to the other interested parties their respective portions; that the carriers' practices at New Orleans not only greatly facilitate these pooling arrangements, but the discrimination is also reflected in the relative selling prices and profits of commodities handled in this manner.

Defendants explain that the practice which has been followed at New Orleans has been in effect since the beginning of rail transportation to and from that point, and grew out of competition with boats on the Mississippi River. However, it is testified that the competitive conditions which induced its establishment have long since disappeared; that some years ago the carriers reached the conclusion that the continuation of the practice resulted in a special service at New Orleans and "would give rise to complaints of discrimination as against other points"; that steps were thereupon taken with a view to obtaining authority to establish a charge for such services, but that these efforts were abandoned when the railroads passed under federal control; and that subsequently, as a result of an investigation of the situation, various committees of the Railroad Administration recommended that a charge be made for the loading and unloading service, but for various reasons those recommendations were not acted upon.

Reference is made in the record to an alleged agreement or tacit understanding that the carriers were to protect the commercial interests of New Orleans by continuation of this free service. While conceding that such an agreement would have no binding force, the intervenor urges that the evidence thereof supports its contention that the service in question may be presumed, from its long-continued performance by defendants, to be covered by the freight rates, and

as these rates themselves are not assailed, the complaint should be dismissed. It is testified for defendants, however, that this service is distinct from and in addition to the transportation service and was never contemplated in making the rates. The intervenor's contention seems untenable when it is noted that the same rates apply regardless of whether the traffic moves to or from warehouse, team track, or private siding, that the service is furnished only in connection with shipments handled through the carriers' warehouses, and that it is not based upon a requirement of the tariffs but is performed at the carriers' option.

The intervenor further contends that no undue preference results to the New Orleans shippers, as the physical, competitive, and transportation conditions at that point are dissimilar to those at Natchez. In this connection it is testified that most of the freight delivered at the warehouses in New Orleans could not be handled on team tracks, and that many of the merchants are located in a very congested district where private sidetracks are not available; that moreover the carriers' terminal facilities at New Orleans are limited and their team tracks inadequate. The record, however, does not establish that the team tracks at that point are not ample or that conditions do not permit of shippers securing industrial tracks. We have frequently held that we can not require carriers to adjust rates for the purpose of equalizing natural or commercial disadvantages. See *Port Arthur Board of Trade v. A. & S. Ry. Co.*, 27 I. C. C., 388, and cases cited.

The intervenor further attempts to show that the large wholesalers located on defendants' rails, by reason of the elimination of drayage and storage charges, have an "enormous advantage" over the shippers handling freight through the warehouses, and that the benefit to the merchants of the carriers' loading and unloading is offset by the cost of drayage and storage to which they are subject; also that the carrier pays lower switching absorptions on cars sent to the warehouses than on those delivered to private sidings; and that despite the service rendered in connection with the warehouse receipt and delivery, such method of handling the traffic conserves the carriers' revenues, as it secures prompt release of equipment. The testimony as to certain of these contentions is challenged in the record, but it does not appear that these various matters bear directly upon the issue of undue prejudice.

It is testified in behalf of the intervenor that practices similar to those at New Orleans exist at certain points in the north; but while tariffs of the carriers are cited in this connection, the record does not specifically disclose the extent and character of these services or the transportation conditions surrounding them; and the assertion of the witness that they are extended "under conditions similar to those at New Orleans" is too indefinite to form a basis for a finding.

In order to conform to the requirements of the law and the tariff regulations prescribed by us, carriers' rates and rules should be definite and specific. The New Orleans rules are objectionable in failing to meet these requirements and specifically to provide under what conditions the carriers' right to load and unload the freight will be exercised. *Schultz-Hansen Co. v. S. P. Co.*, 18 I. C. C., 234; *Storage Charges in C. F. A. Territory*, 28 I. C. C., 372. The record fails to explain certain of defendants' practices under these rules, particularly with respect to the privilege accorded shippers of taking delivery of freight in, and shipping it in carloads direct from, the warehouses; but while the full extent to which the disparity in the respective rules at Natchez and New Orleans has operated to the detriment of the Natchez shippers is not disclosed, it nevertheless clearly appears that by reason of that disparity the New Orleans shippers have been unduly preferred to the disadvantage of the Natchez shippers.

Of the 10 carriers named as defendants in the complaint, only 5 may properly be charged as parties to the undue prejudice alleged, for the reason that they are the only ones whose lines serve more than one of the four cities which are involved in this proceeding. Those five are the Yazoo & Mississippi Valley Railroad Company, Missouri Pacific Railroad Company, Morgan's Louisiana & Texas Railroad & Steamship Company, Louisiana Railway & Navigation Company, and New Orleans, Texas & Mexico Railway Company. We find that the practice of the above-named defendants of loading and unloading carload freight, other than export and import freight, into or out of warehouses at New Orleans without charge, while refusing to perform such service without charge at Natchez, Vicksburg, and Baton Rouge, in so far as each serves one or more of the three last-mentioned points, is unduly preferential of shippers at New Orleans and unduly prejudicial to their competitors at those points. An order will be entered requiring such defendants to cease and desist from the undue prejudice herein found to exist.

HALL, *Commissioner*, dissenting:

The carriers "reserve the right to load or unload at their convenience" at New Orleans. This rule gives the shipper or receiver of freight no rights, and if the same rule were applicable at Natchez, Baton Rouge, or Vicksburg, a shipper or receiver there could not claim that the carrier must exercise its reserved right for his benefit.

This reserved right appears to be analogous to a right reserved to store goods after the free time has expired, so as to release equipment. Would it be unduly prejudicial to receivers of freight at New Orleans if the carriers reserved the latter right at New Orleans and not at Natchez?

Congested conditions in one city may call for treatment very different from that which would be appropriate and sufficient in others. For an instance, see *Waste Merchants Asso. v. Director General*, 57 I. C. C., 686. It does not appear that conditions at Natchez, Baton Rouge, or Vicksburg are such as to require the same treatment as in New Orleans. Every difference in treatment does not constitute undue prejudice. A prejudice to be undue must hurt, and be such that removal of it in any one of the ways open to the carriers will result in cure of that hurt.

But, passing from the rule to the practice under it: At New Orleans the loading or unloading without charge is done only at carriers' warehouses. Only identical carloads of sugar, rice, or molasses are both unloaded and loaded. Carloads of coffee, sisal, burlap, and bagging are loaded but not unloaded, and carloads of flour, canned goods, sacked grain, furniture, fruits, and vegetables are unloaded but not loaded. No carloads of other commodities are loaded or unloaded without charge.

The carriers could comply with our forthcoming order by building or acquiring warehouses at Natchez, Baton Rouge, and Vicksburg, for which no present need is shown upon the record, and by there loading or unloading without charge the same commodities as in New Orleans. How would that benefit Natchez, for example? The business section of this town of 12,600 inhabitants is not so extensive or inaccessible as to present any especial obstacle to the use by its merchants of team tracks or private sidings at their own places of business, and the cost to them of utilizing such carriers' warehouses, if built, with the necessity of draying to and from them, could hardly be less than that they now bear.

If, however, the carriers effect removal by imposing a charge at New Orleans for what is now covered by the rate, and other carriers there, which do not serve Natchez or Baton Rouge or Vicksburg and are not affected by the order in this case, continue their present practice, the defendants and the New Orleans merchants both will suffer a detriment. If these other carriers also impose the charge, New Orleans alone will bear the detriment. But I discern no corresponding benefit to Natchez which has substance. Its merchants will still be competing, as they are now, with the larger merchants at New Orleans who load and unload on their own private sidings, as well as with the others there who use carriers' warehouses. The record indicates that only a relatively small proportion of the entire carload traffic to and from New Orleans is loaded or unloaded without charge. The undue prejudice alleged seems to me more a theory than a fact, and quite unproven on this record.

The complaint should be dismissed.

No. 11046.

GREATER DES MOINES COMMITTEE, INCORPORATED,
v.
DIRECTOR GENERAL, CHICAGO, MILWAUKEE & ST.
PAUL RAILWAY COMPANY, ET AL.

Submitted April 26, 1920. Decided December 29, 1920.

Rates on flaxseed, in carloads, from Minneapolis, St. Paul, and Duluth, Minn., to Des Moines, Iowa, found not unreasonable or unduly prejudicial. Complaint dismissed.

J. H. Henderson and E. G. Wylie for complainants.

J. N. Davis for defendants.

T. A. McGrath for intervenor.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation organized to promote the commercial interests of Des Moines, Iowa, alleges that the rates on flaxseed, in carloads, from Minneapolis, St. Paul, and Duluth, Minn., to Des Moines are unjust, unreasonable, and unduly prejudicial in comparison with rates from the same points to Chicago, Ill., and points taking Chicago rates. We are asked to establish from Duluth to Des Moines rates no higher than those contemporaneously maintained from that point to Chicago and points taking the same rates, and from Minneapolis and St. Paul, hereinafter termed the twin cities, rates 2.5 cents per 100 pounds less than those contemporaneously maintained to Chicago and points taking the same rates. At the hearing the Minneapolis Traffic Association intervened on behalf of defendants. Rates will be stated in cents per 100 pounds.

The rates assailed are local and proportional rates of 17.5 cents from the twin cities, and joint and combination rates of 24 cents from Duluth, the latter composed of a local of 6.5 cents to Minneapolis and a proportional of 17.5 cents beyond.

In fixing class and certain commodity rates, not including that on flaxseed, Des Moines is in Chicago territory. The commodity rate 60 I. C. C.

on flaxseed from the twin cities and Duluth to Chicago is 12.5 cents. Complainant couples this divergence from what it considers the normal rate structure with the greater service required to transport flaxseed from the twin cities to Chicago as compared with Des Moines. From the standpoint of service from Duluth complainant contends that Des Moines and Chicago should be on a parity. Service, within the meaning of complainant's contention, comprises relative distance of line-haul and essential terminal movement.

The short-line distances from Minneapolis and Duluth to Des Moines are approximately 270 and 420 miles, respectively, as compared with 407 and 464 miles to Chicago. Distance alone considered Des Moines is situated more favorably than Chicago with respect to traffic from the twin cities and Duluth.

In the absence of other evidence that a commodity rate is unreasonable or unduly prejudicial the fact that it is a moderately greater or less percentage of a corresponding class rate is not sufficient ground for condemning it. *Decker & Sons v. C., M. & St. P. Ry. Co.*, 80 I. C. C., 547, 551. Defendants show that the commodity proportional rates on flaxseed from the twin cities and Duluth to points in Chicago blanket territory are paper rates, except those to Chicago proper, which is the only point at which flaxseed crushers are located.

The principal product of flaxseed is linseed oil. The fact that flax should be grown on virgin soil tends to shifts in the producing fields. About 25 years ago the largest production was in Iowa, with Chicago as the principal crushing center. There were some flaxseed crushers at Kansas City, Mo., Omaha, Nebr., and Sioux City, Ottumwa, Burlington, Boone, Iowa City, Cedar Rapids, and Dubuque, Iowa. At present the greatest production is in Minnesota, the Dakotas, Montana, and Canada, although some flaxseed, said to be of inferior grade, is still produced in Iowa and Kansas. The two leading markets in the United States are Duluth and Minneapolis; and the latter, to which the northwestern producing field is directly tributary, is the great crushing center, the linseed-oil output of its crushers almost equaling the combined output of all others. The transition of the flaxseed-crushing industry from the section adjacent to Des Moines appears to have been due primarily to the constant change in field of production.

During the past few years the production in the United States has declined; and when the demand of the crushers exceeds the domestic production, as it does at times, the deficiency is supplied by importations, largely from Argentina. The crusher at Des Moines in February, 1920, had purchased from that source since September 1, 1919, in excess of 50 per cent of its requirements. This crusher started business in 1919, and during the past six years

has experienced a steady growth. In 1915 it crushed 40,000 bushels, and from September 1, 1919, to February 6, 1920, purchased 291,000 bushels. Of the amount last stated 86,000 bushels were from Minneapolis, 45,000 bushels from other domestic sources, and the balance from Argentina. It was testified that in ordinary times the crusher was unable to compete actively with the Minneapolis and Chicago crushers on account of the freight rate, but that, under present conditions, when sales of linseed oil are made at a margin of profit much greater than in normal times, the Des Moines crusher had been able to overcome to an extent the rate disadvantage. During 1919 it shipped 100 cars of linseed oil and anticipates marketing 165 cars during 1920. It sells its products in Iowa and northern Missouri and competes with the Chicago, Buffalo, and Toledo crushers in Ohio, Indiana, and Illinois, and with the Minneapolis and Duluth crushers in Kansas and Colorado.

Defendants assert that the rates under attack are not unreasonable in themselves, or unduly high in comparison with the rate of 12.5 cents applicable from Duluth and the twin cities to Chicago. Exhibits were introduced comparing rates on flaxseed from and to representative points in the vicinity of Des Moines with the rates under attack, but these comparisons are of little value, as there are no crushers in operation at the majority of the points named as destinations, and the probability of actual movements of flaxseed on such rates is remote. These rates, however, illustrate to some extent the general level of rates which prevailed in this section when there were mills at Kansas City, Omaha, and Sioux City, and they compare favorably with the rates to Des Moines.

Defendants urge that flaxseed should properly take rates somewhat higher than the level of grain rates, and that the latter may with propriety be used as a basis for measuring the relative height of flaxseed rates. In the following statement defendants compare the flaxseed rates in controversy with rates on grain from the twin cities to representative points in Iowa, Nebraska, and Missouri:

From Minneapolis and St. Paul, Minn., to—	Commodity.	Average short-line distance.	Rate.	Revenue per ton- mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Des Moines, Iowa.....	Grain and flaxseed.....	264	17.5	13.2
Cedar Rapids, Iowa.....	Grain.....	261	17.5	13.4
Sioux City, Iowa.....	Wheat.....	270	15.5	11.5
Clinton, Iowa.....	Grain.....	314	18.5	11.7
Davenport, Iowa.....	do.....	336	18.5	11
Omaha, Nebr.....	do.....	348	18.5	10.6
Burlington, Iowa.....	do.....	368	18.5	10.2
Keokuk, Iowa.....	do.....	422	18.5	8.8
St. Joseph, Mo.....	do.....	499	20	8.5
Kansas City, Mo.....	do.....	488	20	8.2

The contention that rates on flaxseed should be higher than on grain is based upon the lighter loading of flaxseed, its smaller volume of movement, greater value, and greater susceptibility to damage. We have recognized the propriety of somewhat higher rates on flaxseed than on coarse grain in *Rates for Transportation of Flaxseed*, 23 I. C. C., 272; *In Re Rates for Transportation of Flaxseed*, 25 I. C. C., 337; *Railroad Commissioners of Montana v. B., A. & P. Ry. Co.*, 31 I. C. C., 641.

In *Rates on Flaxseed, Minneapolis to Fredonia, Kans.*, 29 I. C. C., 633, we declined to permit the carriers to increase the flaxseed rates from Minneapolis to Kansas City, Fredonia, and surrounding territory, including Des Moines, to a higher basis than the wheat rates contemporaneously applicable from and to the points involved. Accordingly, the flaxseed rate to Des Moines was fixed at 14 cents, which was also the wheat rate at that time. General order No. 28 of the Director General of Railroads increased both rates 25 per cent, and raised the coarse-grain rates to the level of the wheat rate. Therefore the present rates¹ on coarse grain and flaxseed from the twin cities to Des Moines are the same.

The above table evidences the fact that, distance considered, the rates on flaxseed from the twin cities to Des Moines are not unduly high, as compared with grain rates from the same points to other representative destinations in Iowa, Missouri, and Nebraska. Defendants also compared the rates under attack with rates on grain and flour for representative movements from and to points in the territory adjacent to Des Moines. This comparison does not show the rates on flaxseed from the twin cities to Des Moines to be unduly high. Based upon an average load per car of 29.7 tons, which defendants submitted as typical of flaxseed, the rate to Des Moines yields for the distance of 270 miles from Minneapolis over the most direct route, ton-mile earnings of 12.96 mills, and car-mile earnings of 38.4 cents, and for the distance of 420 miles from Duluth over the most direct route, ton-mile earnings of 11.4 mills and car-mile earnings of 33.9 cents.

Complainant, in further support of its contention that the proportional rate from the twin cities to Des Moines was unreasonably high, claimed the existence of a proportional rate of 10.5 cents from and to the same points applicable to flaxseed, in carloads, originating at points in North Dakota and Montana on the line of the Northern Pacific and stopped in transit at Minneapolis. There are joint rates on flaxseed from producing points on the Northern Pacific in the states named to Des Moines, with transit privilege at Minneapolis.

¹ Reference in this report to present rates is to those in effect prior to the increases authorized in *Increased Rates*, 1920, 58 I. C. C., 220.

Flaxseed, as it is shipped from country stations, contains from 4 to 14 per cent "dockage," which is a term used to characterize the various grains and seeds such as volunteer wheat, oats, corn, mustard seed, fox-tail, and pigeon grass, which become mixed with the flaxseed. The Minneapolis elevators clean the flaxseed down to 2 or 3 per cent of the foreign matter and sell separately the various constituents of the dockage. It is impracticable for the crusher at Des Moines to separate the flaxseed from the other grains and seeds. Hence it is unable to secure the benefit of these joint rates except in such occasional instances as it can purchase from Minneapolis dealers cleaned flaxseed which originated at points from which the joint rates apply.

Defendants asserted that 10.5 cents per 100 pounds represents the division accruing to the carrier performing the service from Minneapolis to Des Moines. Complainant endeavored to establish from expressions in our decided cases that a proportional rate is in substance a division of a through rate, and that conversely the division in question, is, to all intents and purposes, a proportional rate. The cases cited do not sustain this contention. "A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the amended act, applicable to through transportation." *Bascom Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C., 354, 356. In other words, being separate parts of through rates, proportional rates, in order to be lawful, must be established, within the meaning of section 6, by publication and filing with us. A different rule is applicable to divisions.

Complainant contends in substance that, considering the proportional commodity rates on flaxseed from the twin cities and Duluth to Chicago as reasonable maximum rates, the rates to Des Moines should be fixed on the basis of the proportion of the Chicago rates which the short-line distance from points of origin to Des Moines bears to the short-line distance from the same points to Chicago. It is urged by defendants that the proportional commodity rates on flaxseed from the twin cities and Duluth to Chicago are subnormal by reason of water competition and other competitive factors, and can not serve as a measure for rates between points which those factors do not influence. A history of the rate shows that prior to 1901 it was 10 cents, reduced on January 31, 1901, to 8 cents, and on July 8, 1903, to 7.5 cents. In 1912 the carriers filed tariffs proposing to restore the 10-cent rate. The tariffs were suspended, but under our decision *In Re Rates for Transportation of Flaxseed, supra*, the increased rates were allowed to become effective. In that case we said, at page 338:

* * * it was stated that water competition via Duluth had forced the rail carriers to reduce the all-rail rate to the present amount. * * * water
60 I. C. C.

competition was undoubtedly one of the reasons, if not the controlling reason for the making of the reduction, and so far as the record shows this competition is as effective to-day as it was in 1902.

The increase from 10 to 12.5 cents was made on June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads.

As evidencing the subnormal character of the rates to Chicago the following comparisons of rates on flaxseed were submitted:

From—	To—	Distance.	Rate.	Revenue per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Minneapolis.....	Chicago.....	406	12.5	6.1
Duluth.....	do.....	464	12.5	5.3
Minneapolis.....	Duluth.....	150	6.5	8.6
Kansas City.....	Chicago.....	451	17.5	7.7
Omaha.....	do.....	489	17.5	7.1
Kansas City.....	St. Louis.....	277	11.5	8.3
Omaha.....	do.....	414	11.5	5.4
Kansas City.....	Minneapolis.....	494	30	8.1
Minneapolis.....	Kansas City.....			
Omaha.....	Minneapolis.....	356	18.5	10.4
Kansas City.....	Sioux City.....	287	19.5	13.6
Sioux City.....	Kansas City.....			
Chicago.....	Buffalo.....	504	18	7.1
Do.....	Cleveland.....	339	14.5	8.6
Do.....	Toledo.....	233	11.5	9.9

It will be observed that the rate from Duluth to Chicago produces a lower ton-mile revenue than any of the rates compared. The same is true of the rate from Minneapolis to Chicago, with one exception, the Omaha-St. Louis rate. That rate for 414 miles is the same as the rate from Kansas City to St. Louis, 277 miles, and was established for the purpose of placing Omaha on a parity with Kansas City for St. Louis shipments. The last three rates shown are in effect from Chicago to points in central territory where flaxseed crushers are located and to which there is a movement.

Statistics of record show that there has been competition between the water and rail carriers in the transportation of flaxseed from Duluth to Chicago, in some years more tonnage having moved by water than by rail. During 1918 there was no movement by water and the movement for 1919 totaled only 30,000 bushels. This transition in the instrumentality of carriage is no doubt attributable to the diversion of vessels from the lakes to ocean transportation, which during the past few years has been extremely profitable.

The present rate on flaxseed from Minneapolis to Duluth is 6.5 cents. Normally the water rate from Duluth to Chicago during the shipping season, October and November, is not in excess of 4 cents. In *In Re Rates for Transportation of Flaxseed, supra*, we expressed the view that water competition was the principal reason for the

low basis of rates from the twin cities and Duluth to Chicago. If the effect of water competition on the rail rates could be eliminated it would not follow that the rates from Duluth and Minneapolis to Des Moines should, *ipso facto*, be constructed on the basis of the rates to Chicago. In such a contingency the volume of the traffic and the presence of carrier competition would no doubt still depress the level of Chicago rates. Undue prejudice within the meaning of the act can not be said to lie merely in withholding from a given point not similarly affected by transportation conditions rates which are accorded to other points.

We find that the rates on flaxseed, in carloads, from Minneapolis, St. Paul, and Duluth to Des Moines were not and are not unreasonable or unduly prejudicial to Des Moines. The complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

I concur in the finding that the rates assailed are not unreasonable, but differ with respect to the issue of undue prejudice. The situation is shown concisely in the following table:

	Distance.	Rate.	Ton-mile earnings.
	Miles.	Cents.	Mills.
Duluth to Chicago.....	464	12.5	5.4
Duluth to Des Moines.....	420	24	11.4
Minneapolis to Chicago.....	407	12.5	5.1
Minneapolis to Des Moines.....	270	17.5	13

On the basis of ton-mile earnings, the rate from Duluth to Des Moines is 115 per cent in excess of the rate from Duluth to Chicago, while the rate from Minneapolis to Des Moines is 113 per cent in excess of the rate from Minneapolis to Chicago.

The burden of justifying such disparities as these ought not to be light. Volume of traffic is suggested, but the rate structure in issue may be, and probably is, a potent reason for differences in volume. Rail competition between the twin cities and Chicago is mentioned, but there is also rail competition between the twin cities and Des Moines. Justification must, therefore, rest solely on the alleged water competition via the great lakes.

The record shows that there was no movement of flaxseed by water from Duluth in 1918, and that only 30,000 bushels so moved in 1919. Perhaps there may be a larger movement in the future, but that is speculation. Even if this larger movement were assured, it does not seem to me a necessary conclusion that the mere presence or imminence of substantial water competition justifies such rate disparities as are here shown.

60 I. C. C.

The proper disposition of the case, as I view it, is to find on this record no justification for a higher rate from Duluth to Des Moines than from Duluth to Chicago, and that the rate from the twin cities to Des Moines should be not less than 2.5 cents under the rate from the twin cities to Chicago. If subsequent experience should make it necessary for defendants to reduce the rates to Chicago to meet water competition, the case could be reopened to afford them an opportunity of justifying the reductions proposed in the light of the evidence then available.

GO I. C. C.

No. 11089.
RUDY-PATRICK SEED COMPANY
v.
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted April 29, 1920. Decided December 29, 1920.

Freight charges on two mixed carloads of seeds shipped from Lamar, Mo., and Middleton, Okla., to Kansas City, Mo., found to have been legally assessed and not unreasonable. Complaint dismissed.

W. L. Bridges for complainants.

A. T. Sullivan for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed by the parties to the proposed report of the examiner, but upon consideration of the record we have reached conclusions differing somewhat from those suggested by him.

Complainant, a corporation engaged in the wholesale seed business at Kansas City, Mo., alleges that the charges collected on two mixed carloads of seeds shipped to Kansas City, one from Lamar, Mo., March 31, 1919, and the other from Middleton, Okla., April 5, 1919, were unjust and unreasonable. We are asked to award reparation and to prescribe just and reasonable rates and rules for the future. Rates are stated in cents per 100 pounds.

The Lamar shipment contained 14,377 pounds of cowpeas and 45,735 pounds of cane seed, 2,460 pounds of feterita seed, and 3,082 pounds of millet seed. The Middleton shipment consisted of 606 pounds of millet seed, 14,619 pounds of cane seed, and 14,543 pounds of sudan seed. The grain tariff of defendants naming commodity rates on millet, cane, and feterita seeds from both Lamar and Middleton to Kansas City contained an item reading in part as follows:

On * * * mixed carload shipment of seeds, * * * from one consignor to one consignee, the highest carload rate and highest minimum weight for any commodity contained in the car will be applied on the entire carload * * *.

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The tariff did not publish rates on cowpeas or sudan seed. Defendants applied the rule to the Lamar shipments by assessing charges on the basis of the carload rate of 14.5 cents on millet seed, the highest-rated commodity in the shipment, and the combined actual weight of the cane, feterita, and millet seeds, to which was added a charge at the less-than-carload class rate of 25 cents on the cowpeas. On the Middleton shipment charges were assessed on the basis of the millet-seed rate of 20 cents and a minimum weight of 30,000 pounds on the millet and cane seeds, and on the sudan seed the less-than-carload class rate of 72.5 cents applicable on grass seed.

Complainant offered no evidence tending to prove the unreasonableness of the rates charged, except the rate on sudan seed, but contends that charges should have been assessed in accordance with a rule of the western classification reading as follows:

When mixed carload ratings are provided and the aggregate charge upon the entire shipment is less on basis of carload rate and minimum weight (actual or estimated weight if in excess of the minimum weight) for one or more of the articles, and on basis of actual or estimated weight at less than carload rate or rates for the other articles, the shipment will be charged accordingly.

The application of this rule would have resulted in lower charges.

Defendants urge that the rule quoted has no application because a mixed-carload rule is specifically provided in the tariff naming the commodity rates. That tariff states on its title-page that it is governed, "except as otherwise provided herein," by the western classification. It publishes specific commodity rates and minimum weights and contains a rule which states fully what commodities may be shipped in mixed carloads and what rates shall be applied on such mixed-carload shipments. Neither the commodity tariff nor the classification permit the inclusion of cowpeas or sudan seed in mixed carloads with the other commodities shipped, and those articles were properly treated as separate less-than-carload shipments. The articles moving at the mixed-carload rates are completely covered by the commodity tariff and it seems clear that the classification rule is not applicable. *Rule 7 of Tariff Circular No. 18-A; Conf. Ruling 84.* This view is strengthened by the fact that the classification rule above quoted refers to "mixed carload ratings," indicating that the application of the rule is limited to carload mixtures provided in the classification to the exclusion of such as are covered by commodity rates.

Sudan seed, which composed about one-half the weight of the Middleton shipment, is described as a kind of grass seed of less value than clover or alfalfa seed. Complainant contends that this commodity should be accorded rates not higher than the rates applicable on cane seed. It showed that from Kansas and Texas points

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to Kansas City defendants apply commodity rates on this seed no higher than the contemporaneous rates on cane seed. The movement of sudan seed from Kansas and Texas points is considerable, from Oklahoma small, but it is claimed that with commodity rates, under which the mixing rule would be applicable, more sudan seed would be grown and shipped from Oklahoma points. The question raised by complainant at the hearing, whether from Oklahoma points on the lines of defendants to Kansas City sudan seed should be accorded rates no higher than on cane seed can not be considered on this record. The pleadings limit any such consideration to the propriety of establishing for the future this parity of rates from Middleton. Nothing herein shown warrants a change in our views expressed with regard to the proper rating on sudan seed in *Barteldes Seed Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 111, and the record does not afford a proper basis for a finding of unreasonableness *per se* of the rate from Middleton.

We find that the charges were legally assessed and were not unreasonable.

An order will be entered dismissing the complaint.

EASTMAN, *Commissioner*, dissenting:

I concur in the finding of the majority that the classification rule upon which complainant relied was inapplicable to the shipments in question, but am of opinion that the mixing rule under which the charges were assessed was unreasonable in so far as it deprived the shipper of the benefit of the lower charges which would have resulted under the classification rule. It seems to me that any rule which results in a higher aggregate charge on a mixed-carload shipment at a carload rate than would result under the carload rate on one or more of the commodities and the less-than-carload rate or rates on the remainder is unreasonable.

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INVESTIGATION AND SUSPENSION DOCKET No. 1168.

PRESS CLOTH RATES.

Submitted July 3, 1920. Decided February 15, 1921.

Cancellation of a commodity rate of 50 cents per 100 pounds on hair and wool press cloth, in carloads, from Houston, Tex., to Vicksburg, Miss., and New Orleans, La., applicable only over routes composed in part of carriers that during the period of government operation were not under federal control, found to have been justified.

Clifford Thorne for protestants.

C. W. Owen and *Robert W. Fyfe* for respondents.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a report proposed by the examiner, to which no exceptions were filed.

By the item which was suspended herein the respondents proposed to cancel the commodity rate of 50 cents per 100 pounds applying on hair and wool press cloth, in carloads, from Houston and Camp Logan (Houston), Tex., to New Orleans and other points near-by in Louisiana and to Vicksburg, Miss. The cancellation became effective July 28, 1920, upon the expiration of the period covered by the suspension order. When the item was suspended the rate applied only over routes composed in part of lines that during the period of government operation were not under federal control. Class rates applied on the traffic that moved wholly over lines that were under federal control, and the purpose of the proposed cancellation was to make effective corresponding rates when a nonfederally controlled carrier participated in the transportation. Upon protest of the Interstate Cotton Seed Crushers' Association the item was suspended pending this investigation.

Press cloth is a coarse fabric woven of wool, hair, or cotton, which is used in hydraulic presses in the extraction of oil from cotton seed and other oil-bearing seeds and nuts. Hair and wool press cloth, the only kinds involved in this proceeding, are rated first class, any quantity, in official, southern, and western classifications. One of the largest plants in the south manufacturing hair and wool press cloth is located at Houston, and there is therefore considerable move-

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ment from Houston to the Mississippi River and points in the cotton-producing sections in the southeast.

Prior to February 22, 1919, the 50-cent commodity rate applicable on hair and wool press cloth from Houston to New Orleans and Vicksburg was applicable via the lines of all carriers parties to the tariff, but effective on that date, in accordance with freight rate authority No. 3050 of the director of traffic, Railroad Administration, it was canceled in so far as it applied over routes composed wholly of carriers under federal control. Thereupon the rate to Vicksburg, applicable on shipments destined to points beyond to which no through rates were in effect, and to New Orleans, became \$1.115. The rate to Vicksburg proper was increased to \$1.715. Application on behalf of the nonfederally controlled lines to cancel the rates was filed with the Commission on January 27, 1919. That application was heard in connection with the rehearing in Docket No. 9236, *Oriental Textile Mills v. A. & V. Ry. Co.*, originally reported in 48 I. C. C., 31, which involved principally the propriety of the first-class rating, any quantity, on press cloth. That case was subsequently consolidated for oral argument and disposition with No. 10970, *Interstate Cotton Seed Crushers' Asso. v. Director General*, now pending, in which it is also alleged, among other things, that the rates on wool and hair press cloth in carloads, less than carloads, and any quantity, from Houston to destinations in the southeast, are unjust and unreasonable and in which we are asked to establish reasonable carload rates and ratings.

In justification of the proposed cancellation respondents argue that the routes from Houston to Vicksburg or New Orleans, composed in part of nonfederally controlled carriers, are illogical and exceed the distances by way of the natural routes. The following are the carriers which were not under federal control, and which may participate in the transportation, inasmuch as the application of the rates is unrestricted: Brimstone Railroad & Canal Company; Franklin & Abbeville Railway Company; Lake Charles Railway & Navigation Company; Louisiana & Pacific Railway Company; Neame, Carson & Southern Railroad Company; Oakdale & Gulf Railway Company; Red River & Gulf Railroad Company; Woodworth & Louisiana Central Railway Company; Arkansas & Louisiana Midland Railway Company; Louisiana & North West Railroad Company; and Fremont & Gulf Railway Company. No one of the above-named carriers is so situated as normally to participate in the through movement of traffic from Houston to the Mississippi River.

Protestants cite the movement of two carloads of press cloth in 1919 from Houston to the New Orleans district at the 50-cent rate. One moved over the rails of the Louisiana & Pacific Railway and

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the other by way of the Louisiana & North West Railroad. The Louisiana & Pacific operates by a traffic agreement over the rails of the Lake Charles & Northern Railroad, a subsidiary of the Southern Pacific Company, between De Ridder and Bridge Junction, La., 1 mile north of Lake Charles, La., connecting at De Ridder with the Kansas City Southern and Gulf, Colorado & Santa Fe railways; at Fulton with the New Orleans, Texas & Mexico Railroad; at Bon Ami with the Kansas City Southern; and at Lake Charles with the Louisiana Western Railroad, a Southern Pacific line, and with the Kansas City Southern and Missouri Pacific. Traffic from Houston destined to New Orleans, moving via the Louisiana & Pacific, could be delivered to that carrier at Lake Charles for movement to Fulton, 17 miles, thence over the New Orleans, Texas & Mexico, or to De Ridder, 43 miles, thence over the Gulf, Colorado & Santa Fe, or by the New Orleans, Texas & Mexico at Fulton for movement north to De Ridder or south to Lake Charles. These are illogical routes and result in short-hauling the Southern Pacific on traffic turned over to the Louisiana & Pacific at Lake Charles and the Gulf Coast Lines on traffic surrendered at Fulton.

The Louisiana & North West extends from Natchitoches, La., to McNeil, Ark. It connects at Natchitoches with the Texas & Pacific Railway, at Hagen, La., with the Louisiana Railway & Navigation Company, at Chestnut, La., with the Louisiana & Arkansas Railway, at Gibbsland, La., with the Vicksburg, Shreveport & Pacific Railway, and at McNeil with the St. Louis Southwestern Railway. Because of its financial weakness it was accorded an addition of 15 cents to the rates prescribed for the standard lines in *Natches Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105. According to respondents the shortest route from Houston to New Orleans in which the Louisiana & North West could participate is via the Houston East & West Texas and Houston & Shreveport railways to Shreveport, Vicksburg, Shreveport & Pacific to Gibbsland, Louisiana & North West to Hagen, thence Louisiana Railway & Navigation Company, a total distance of 578 miles as compared with the short-line distance of 357 miles via the Gulf Coast Lines to Baton Rouge, thence Louisiana Railway & Navigation Company. A route to Vicksburg in part over the rails of the Louisiana & North West would be equally indirect.

Protestants refer to two other possible routes to New Orleans which are not markedly circuitous. One is in connection with the Brimstone Railroad & Canal Company, and the other with the Franklin & Abbeville Railway. The Brimstone Railroad & Canal Company owns 8 miles of track, operated for freight traffic only, extending from Sulphur Mine, La., to Brimstone Junction and Lockport Junction. It connects with Morgan's Louisiana & Texas Com-

pany at Brimstone Junction and with the Kansas City Southern at Lockport Junction. Traffic from Houston to New Orleans via this route would be delivered to the Brimstone Railroad & Canal Company at Brimstone Junction, moved to Lockport Junction, and thence over the Kansas City Southern to its connection with the Morgan's Louisiana & Texas Company, thus adding two carriers to the route. The route via the Franklin & Abbeville is over the rails of the Southern Pacific or Gulf Coast Lines to New Iberia, La., thence Franklin & Abbeville to Franklin or Sterling, La., for further movement by the Southern Pacific. The haul of the Franklin & Abbeville would be 29 miles. So far as the record shows no traffic from Houston to New Orleans has ever moved over these routes.

Upon this record we find that the respondents have justified the cancellation of the commodity rate over routes composed in part of lines that were not under federal control and the proceeding will therefore be discontinued.

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No. 11006.

KALAMAZOO TANK & SILO COMPANY

v.

**DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.***Submitted April 23, 1920. Decided December 29, 1920.*

Storage charges on hollow building tile held on carrier's right of way at Boone, Iowa, found to have been unreasonable. Reparation awarded and measure of maximum reasonable charges prescribed.

George J. Bolender for complainant.*Robert H. Widdicombe* for defendants.**REPORT OF THE COMMISSION.****DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.****BY DIVISION 3:**

The issues here presented were made the subject of a proposed report by the examiner to which exceptions were filed by the defendants.

Complainant is a corporation engaged in the manufacture of farm-operating equipment at Kalamazoo, Mich. By complaint filed November 10, 1919, it alleges that unreasonable and unduly prejudicial charges were collected by the Chicago & North Western Railway Company, hereinafter called the defendant, for the storage on that carrier's right of way at Boone, Iowa, from April 16 to May 28, 1919, of 37,812 pounds of hollow building tile originally shipped from Carbon, Ind., to Boone, and reshipped thence to West Point, Iowa. Reparation and the establishment of reasonable and nonprejudicial storage charges and rules for the future are asked.

On April 8, 1919, complainant shipped a carload of hollow building tile for silo construction from Carbon to Boone. The car arrived at destination on April 16, 1919, and on the same day was unloaded by the consignee on the defendant's right of way. After having removed part of the shipment from defendant's premises and before the expiration of the 48 hours' free time allowed, the consignee notified defendant that he would not accept the remaining 37,812 pounds. The tile remained in the open on the defendant's right of way until May 28, 1919, on which date complainant's agent reloaded and shipped it to a customer at West Point, who paid de-

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defendant \$446.04 for the storage at Boone. Credit for that amount was allowed by complainant in settling the account. The tariff charges were \$435.85, based on a charge of 2 cents per 100 pounds for each of the first five days after the expiration of free time and 3 cents per 100 pounds for the sixth and each succeeding day. The shipment was therefore overcharged \$10.19.

The governing tariff contained the following rule:

Freight which is not liable to damage from the elements and which is not ordinarily handled through freight houses may be stored free, unless otherwise provided, on the vacant land of the railroad, pending shipment, and entirely at owner's risk, provided owner had previously been assigned space as far as available and without distinction.

Complainant contends (a) that the material was stored on the defendant's right of way "pending shipment" and that in other respects it met the requirements of the above rule providing for free storage; and (b) that if this rule is held to be applicable only to property which has never been shipped, it is unduly preferential of original shippers to the prejudice and disadvantage of shippers who must reship their freight. It does not appear, however, that this material can be said to have been stored "pending shipment" within the meaning of the rule quoted, or that any undue prejudice results from the application of the rule to original shipments and not to freight reshipped.

Complainant further urges that, considering the character of the storage furnished, the charges collected were unreasonable. It was testified on its behalf that tile in carload lots could be stored in commercial warehouses at rates of \$9 or \$10 per month. We have repeatedly said that storage charges imposed by commercial warehouses afford no fair test of the reasonableness of storage charges imposed by common carriers.

Complainant also shows that if the material had remained in the car the detention charges would have been \$290, or \$156.04 less than the charges assailed, and that under the tariff in effect at the time of the hearing charges for the detention of a car for the same period would be \$153, or \$223.04 less than the charges assailed.

As pointed out in *Dakota Monument Co. v. Director General*, 59 I. C. C., 101, wherein the history of the rules here under attack is detailed, carriers may impose such storage charges as will compel the removal of freight from their premises, subject, however, to the limitation that the charges must not be unreasonable or otherwise unlawful. The record contains no justification for higher charges on property stored on the carrier's right of way than would have accrued had the property remained in the car in which it was transported.

We find that the applicable storage charges were, are, and for the future will be, unreasonable to the extent that they exceeded or may exceed the charges contemporaneously in effect at Boone, Iowa, on carload traffic under defendant's demurrage and track-storage rules. We further find that complainant made the shipment as described and paid and bore the storage charges thereon; that it has been damaged to the extent of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation in the sum of \$156.04, with interest.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

In my opinion the same reasons that called for dismissal of the complaint in *Dakota Monument Co. v. Director General*, 59 I. C. C., 101, call for dismissal here.

The reasonableness of storage charges is not dependent upon the amount of demurrage that would have accrued if the property had remained in the car. The clearing of carriers' terminal facilities is the primary object of a storage charge. Demurrage has for its object the prompt release of equipment.

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No. 11764.

IN THE MATTER OF INTRASTATE RATES WITHIN THE
STATE OF TEXAS.*Submitted February 8, 1921. Decided February 12, 1921.*

Certain intrastate rates, fares, and charges of respondent carriers in Texas, lower than the corresponding rates, fares, and charges authorized by *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, found to be unduly preferential of persons and localities in intrastate commerce in Texas, unduly prejudicial to persons and localities in interstate commerce, and unjustly discriminatory against interstate commerce. Rates, fares, and charges prescribed which will remove such preference and discrimination.

A. P. Thom, F. H. Wood, T. J. Norton, N. A. Stedman, J. W. Terry, H. M. Garwood, E. B. Perkins, W. B. Hamilton, W. F. Murray, George Thompson, R. J. Boyle, John M. King, A. C. Fonda, J. H. Barwise, jr., John A. Hulen, John T. Bowe, W. F. Sterley, W. C. Logan, Robert H. Kelley, J. B. Shackelford, W. B. Plumb, J. B. Payne, and George T. Atkins for carriers.

John E. Benton for 42 state commissions.

C. M. Cureton, attorney general of Texas, *Bruce W. Bryant*, assistant attorney general of Texas, *S. H. Cowan, S. C. Rowe, and Paul Kayser* for Railroad Commission of Texas.

E. H. Thornton for Galveston Commercial Association, Galveston Cotton Exchange and Board of Trade; *F. R. Dalsell* for Houston Cotton Exchange; *Charles A. Bland* for Beaumont Chamber of Commerce, Beaumont Dock & Wharf Commission, and Texas Ports Association; *J. L. West* for Dallas Cotton Exchange; *U. S. Pawkett* for San Antonio Freight Bureau; *E. P. Byars* for Texas Industrial Traffic League; *L. F. Daspi* for Shreveport Chamber of Commerce; *S. H. Cowan* for American National Live Stock Association and National Live Stock Shippers League; and *S. C. Rowe* for Cattle Raisers Association of Texas.

REPORT OF THE COMMISSION.

FORD, Commissioner:

On August 26, 1920, pursuant to our findings in *Ex Parte 74, Increased Rates, 1920*, 58 I. C. C., 220, carriers by railroad operating in what was therein designated the western group, which includes the state of Texas, increased their interstate freight rates 35 per cent,

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their interstate passenger fares, excess-baggage charges, and rates on milk and cream 20 per cent, and also imposed a surcharge on passengers traveling in sleeping and parlor cars amounting to 50 per cent of the charge for the space occupied, to accrue to the rail carrier. These increased rates, fares, and charges were authorized after an extended investigation and were designed to comply with the provisions of section 15a of the interstate commerce act by which we were directed to initiate or prescribe rates such that the carriers as a whole, or as a whole in each of the rate groups or territories designated by us, will, under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment, earn an aggregate annual net railway operating revenue equal, as nearly as may be, to $5\frac{1}{2}$ per cent on the aggregate value of their property held for and used in the service of transportation, with provision for one-half of 1 per cent in addition, in our discretion, for improvements, betterments, or equipment chargeable to capital account.

Carriers operating within the state of Texas applied to the Railroad Commission of Texas in May, 1920, and July, 1920, for authority to increase their intrastate charges to correspond with the increases to be made in their interstate charges. Hearing was had before that commission on August 11, 1920, subsequent to the promulgation of our report and findings in Ex Parte 74. By order, dated August 21, 1920, the Texas commission limited the increases in intrastate rates and charges for freight service, including switching and special services, to a maximum of $39\frac{1}{2}$ per cent, and dismissed the application as to passenger fares and sleeping and parlor car surcharges on the ground that it was without jurisdiction to authorize increases in fares for the transportation of passengers above those fixed by a state statute. The statute referred to limits the fares for adults to 3 cents per mile and for children under 12 years of age and over 5 to one-half the adult fare. We are advised that the increases authorized in the charges for the transportation of excess baggage correspond with those made effective interstate. The order is silent as to rates on milk and cream.

Upon receipt of the order of the Texas commission the carriers filed with us a petition for relief as provided in section 13 of the interstate commerce act, setting forth the failure or refusal of the state commission to permit the same increases in their intrastate rates, fares, and charges as had been authorized and made effective interstate in the western district and alleging that the result of the lower state charges permitted to be assessed on intrastate traffic causes undue and unreasonable advantage, preference, and prejudice as between persons and localities in intrastate commerce, on the one

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hand, and interstate and foreign commerce, on the other, and undue, unreasonable, and unjust discrimination against interstate and foreign commerce, in contravention of section 13 of the interstate commerce act. Hearing and argument has been had and the matter is now before us for determination. At the outset, reference should be made to our decisions and orders in the so-called *Shreveport Cases*, *Railroad Commission of Louisiana v. St. L. S. W. Ry. Co.*, 23 I. C. C., 31, and 34 I. C. C., 472; and *Railroad Commission of La. v. A. H. T. Ry. Co.*, 41 I. C. C., 83, and 48 I. C. C., 312. The scale of maximum class rates prescribed between Shreveport and Texas points has also been prescribed for application to and from other points in Louisiana and in Oklahoma and points in Texas, thus fixing the relationship between state and interstate rates over a more extensive area.

Rates on many commodities were also prescribed in the *Shreveport Cases*; other commodities were specifically excepted because of no movement to or from Shreveport, and still others were excepted upon agreement of the carriers to apply rates thereon between Shreveport and Texas stations equivalent to the current Texas rates.

Under the requirements of the *Shreveport Cases* and other cases in which the Shreveport scale has been prescribed, the rates on interstate traffic to and from Texas and the great majority of rates on intrastate traffic in Texas have been placed upon a fixed and non-prejudicial relationship. This relationship was not disturbed on August 26, 1920, the effective date of the tariffs issued in conformity with Ex Parte 74, as the increases made in the interstate rates were applied also to the state rates on all traffic embraced in the terms of the Shreveport order. It is estimated that less than 30 per cent of the traffic moving intrastate over the 26 principal carriers in Texas was affected by the order of the Texas commission. The rates on over 70 per cent were increased 35 per cent to accord with the increases in the interstate rates.

Based on the intrastate revenue of the principal Texas lines during the year 1919, derived from freight traffic not subject to the orders in the *Shreveport Cases*, and assuming that the same volume of traffic will continue in the future, the carriers estimate that their annual loss in revenue, due to the restrictions placed upon them by the Texas commission, will approximate \$265,000. The anticipated loss in passenger revenue is much greater. During 1919 the Texas lines earned from their intrastate passenger traffic slightly less than \$35,000,000. With the same volume of traffic, intrastate application of the fares that were approved by us and made effective on interstate travel would yield an annual return greater by \$7,000,000. It is estimated that an additional loss of over \$1,500,000, will result from their failure to
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receive the surcharge upon passengers occupying space in sleeping and parlor cars. The record shows that for the seven months ended July 31, 1920, the operations of the Texas lines, including both state and interstate traffic, were conducted at a loss of more than \$10,000,000.

All the important articles that move intrastate in Texas also move interstate, generally in the same trains and often in the same cars. In some instances the interstate rates are based on the state rates. As an illustration, the rates on lumber from Orange, Tex., to points in Texas have been applied also from a group of points in Louisiana, among others Alexandria. Formerly, therefore, the mills at Orange and Alexandria were on an exact parity, but to-day the interstate shipper, to maintain that parity, must absorb the difference in charges growing out of the lesser increase in rates applied on the shipments of its competitor. Cotton is another important article moving in large volume in Texas and adjoining states. This commodity moves to Houston, Galveston, and other ports for local disposition and for export. The local shipper of Texas cotton receives the benefit of the lower state-made rates, while the exporter and interstate shipper are assessed relatively higher rates. These are typical illustrations of discriminations affecting shippers growing out of the change in the relationship between the state and interstate rates. Many others are given of record. The differences in rates in most instances are slight, ranging from 0.5 cent to 1 cent per 100 pounds, but are without justification from a transportation standpoint. Where differences formerly existed between the state and interstate rates they have been widened by the application of the different rates of increase.

The Kansas City Southern Railway between Texarkana, Ark.-Tex., and Beaumont, Tex., extends for a considerable portion of the distance through Louisiana. Its route between these points is therefore interstate. The routes of other lines from Texarkana and Beaumont to destinations in Texas are intrastate. Unless the rates on traffic moving intrastate are increased to the same extent as those applying interstate, the Kansas City Southern and its connections will be required, for competitive reasons, to forego a portion of the increased revenue to which they are entitled by observing the state rates as maxima. The earnings from passenger traffic will be similarly affected. The fare from Texarkana to Beaumont via the interstate route of the Kansas City Southern is \$10.17, but a passenger may travel over a longer intrastate route through Longview, Tex., at a saving of \$1.70.

For many years the passenger fares in Texas were the same per mile as those assessed for the interstate carriage of passengers. Since August 26, 1920, the intrastate passenger has been accorded a material advantage, although he may travel in the same train and

even in the same seat with an interstate passenger who pays a higher fare. A passenger from Shreveport destined to Houston, for example, will pay a fare of \$8.88, exclusive of war tax, for the distance of 233 miles, while an intrastate passenger from Longview, going to the same point, will be required to pay but \$6.98 for the same distance, a difference in favor of the latter of \$1.40. For most of the distance they may travel on the same train. A passenger traveling from Kansas City to Houston occupying a lower berth will be charged a total fare of \$38.82, including the war tax, while an intrastate passenger traveling from Sierra Blanco to Houston, substantially the same distance, will be charged \$29.87, or \$8.95 less.

Business houses located in Shreveport, Kansas City, and cities in other states compete with local Texas concerns in the development of trade and commerce in Texas. One of the items of expense common to both is the railroad fare of salesmen. The higher basis of fares required to be borne by the former is a burden on them and a distinct advantage to their competitors.

The lower fares in Texas tend to convert interstate revenue into intrastate revenue. This results from the common practice of rebuying tickets at border points, paying the intrastate fare in Texas and the interstate fare beyond the border. The record indicates that at three such points on the Texas & Pacific Railroad, 120 passengers, on an average, are daily rebuying tickets to defeat the interstate fares. The Missouri, Kansas & Texas Railroad enters the state of Texas near Denison, and the number of passengers rebuying tickets at that point renders it necessary at times to hold the trains for their accommodation. Because of the large territory covered by the state of Texas the practice of rebuying tickets causes a substantial loss to the carriers. The distance from the eastern border of the state to the western border is over 900 miles and the earnings on interstate travel may be adversely affected to the extent of \$5 per ticket on travel across the state, and, with Pullman surcharge added, over \$8.

The carriers introduced voluminous exhibits in which they have undertaken to apportion their revenues and expenses between state and interstate freight traffic and thus determine the rates of return on the values of their properties within the state devoted to the public use. The information was developed by the application of what is known as the Oklahoma formula—a formula devised to provide a means for segregating revenues and expenses as between freight and passenger traffic, line and terminal, and state and interstate. The general purport of these exhibits is to show that the carriers, as a rule, have received during recent years a lesser rate of return from their intrastate than from their interstate operations.

Evidence relating to the earnings of the carriers on state traffic was received over objection of counsel for the state commission, and in order to afford that commission an opportunity to submit similar data in its possession, upon which it had predicated its findings, a further hearing was ordered. The record as supplemented contains the calculations relied on by the Texas commission as establishing the fact that an increase of 33½ per cent in intrastate freight rates, added to the amount derived from the increased interstate rates and fares, would yield the carriers fully 6 per cent net return on the property investment in Texas.

We deem it unnecessary for the purposes of this report to enter upon a discussion of the testimony and exhibits dealing with the valuations of railroad properties in Texas and the earnings of the carriers on state traffic. In a proceeding similar to this, *Intrastate Rates within Illinois*, 59 I. C. C., 350, it was urged that in prescribing the measure of the increases to be applied to the rates and charges of the carriers throughout the country necessary to yield the return fixed by Congress for the two years beginning March 1, 1920, we had failed to determine the values of the railroad property separately in that and other states. We pointed out therein that Congress had laid upon us the duty of prescribing rates so that in the aggregate they would yield a certain return, as nearly as may be, "upon the aggregate value of the railroad property of such carriers held for and used in the service of transportation," and expressed the view that the interstate commerce act required us to determine upon a valuation for the total property of the carriers and not for the property that might be assigned to interstate traffic. We adhere to that view and repeat that, in our opinion, the manifest intent of Congress was to repose in us full and final authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any rate, fare, charge, classification, regulation, or practice that causes any undue, unreasonable, or unjust discrimination.

The record herein is silent as to interstate and intrastate commutation and other multiple forms of tickets, extra fares on limited trains, club-car charges, and rates for the transportation of milk and cream, and no findings are herein made with respect thereto.

We are of opinion and find, subject to the reservations above noted, that the increases made by the respondents pursuant to our findings in Ex Parte 74 in the charges for freight service, including switching and incidental services, and for the transportation of passengers, including the surcharges on passengers in sleeping and parlor cars,

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and now in effect within the group herein considered, result in reasonable rates, fares, and charges for interstate transportation within that group, and that the failure of the respondents to increase correspondingly all of their rates, fares, and charges for intrastate traffic within the state of Texas has resulted and will result in intrastate rates, fares, and charges lower than the corresponding rates, fares, and charges contemporaneously maintained on interstate traffic within the state of Texas and between points in the state of Texas and points in other states within that group; in undue and unreasonable advantage to and preference of persons and localities in intrastate commerce within the state of Texas; in undue and unreasonable prejudice to persons and localities in interstate commerce; and in unjust discrimination against interstate commerce.

We further find that said undue preference and prejudice and unjust discrimination can and should be removed by making increases in said intrastate rates, fares, and charges which shall correspond with the increases heretofore made by respondents as aforesaid and now in effect in their interstate rates, fares, and charges within that group.

We further find that, whether the aforesaid rates, fares, or charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions. Schedules filed in compliance with the order herein may be made effective upon not less than five days' notice.

The above findings are without prejudice to the right of the authorities of the state of Texas or any other interested party to apply in the proper manner for a modification of our findings or order with respect to any specified intrastate rate, fare, or charge on the ground that the latter is not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

60 I. C. C.

No. 11267.

HARRIS BROTHERS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.

Submitted November 1, 1920. Decided January 24, 1921.

Fourth-class rating and rates on locomotives, k. d., from New York, N. Y., to Bellwood, Pa., found applicable. Complaint dismissed.

I. S. Blumenthal and *W. R. Powe* for complainant.

Edwin A. Lucas for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, deals in secondhand machinery and railroad equipment at Chicago, Ill. By complaint seasonably filed it attacks the charges collected on various carload shipments of locomotive parts from New York, N. Y., to Bellwood, Pa., which moved over the Pennsylvania, hereinafter called defendant, during November and December, 1917, and April and May, 1918, as unreasonable, excessive, unjust, and in violation of sections 1 and 2 of the act to regulate commerce and section 10 of the federal control act. We are asked to establish a reasonable rate for the future and to award reparation.

In 1917 complainant purchased from the United States government a number of locomotives which had been used in the construction of the Panama Canal. All were stated to be 63-65-ton American and Baldwin regular steam-carrier locomotives, which were completely dismantled by complainant in the Canal Zone. The dismantled parts of 13 or 14 of them comprised the shipments here considered.

The shipments appear to have been delivered to defendant by an official of the Panama Canal at New York, N. Y., on bills of lading made out by that official giving the point of origin as pier 42 or pier 65, North River, New York. The shipments were described therein as so many locomotives, steam, complete, k. d., with the number of

60 I. C. C.

packages; then followed specification of the number of frames, boilers, trucks, drivers, boxes of parts, etc. Nearly all the bills of lading carried a notation reading substantially as follows: "Load loco frames and cylinders level on car floor and put nothing thereon to avoid springing and straining." Defendant assessed the fourth-class rate of 24 cents per 100 pounds, the governing official classification providing as follows:

Locomotives, Locomotive Tenders, Locomotives and Tenders combined, and Locomotives and Cars combined Compressed Air, Electric, Gasoline or Steam;

* * * * *

K. D. (machinery parts boxed) C. L. 4th Class.

Complainant contends that as many of the more valuable parts were shipped separately, and others were missing, the remaining parts comprising these shipments should have been classified as individually set forth in the classification, in which most of them were accorded fifth class. At the hearing the issues were restricted to the sole question whether the shipments properly came within the terms of the classification item quoted.

The locomotives had been out of use for about seven years, during which time they had been stored in the open unprotected from the elements. From many various detachable parts had been taken and other parts were found useless or broken and discarded. For example, only six of the locomotives had headlights and various injectors, drive wheels, and pipes, as well as air-hose coupling were missing. Complainant's witness testified: "We did buy these engines practically complete, with all the fittings and fixtures that were then on the engines at the time we examined them * * *."

The locomotives were purchased f. o. b. New York, but it seems to have been incumbent upon complainant to supervise their preparation for shipment. Practically all of the brass parts were shipped to Depew, N. Y. All of the air-brake equipment was segregated and shipped as a separate consignment to Bellwood. The remaining smaller parts were packed in boxes and shipped with the major parts, such as the boilers, frames, and trucks to Bellwood. As prepared for shipment each locomotive weighed approximately 160,000 pounds and constituted three carloads, there being a total of 48 carloads in the entire consignment. The identity of the respective locomotives was not preserved in loading, the various cases and loose parts being mixed indiscriminately.

Complainant contends that the rate on "Locomotives, K. D." is applicable only when a complete locomotive goes forward as one shipment, that as such was not the case with these shipments, and as the character and identity of these locomotives were destroyed, the various parts should have been accorded their respective classification

ratings. It also contends that rule 22 of the official classification is not applicable as claimed by defendants. This rule provides:

Parts or pieces, constituting a complete article, received as one shipment on one bill of lading will be charged at the rating provided for the complete article.

Attention is called to the fact that in one instance two separate bills of lading were issued, each covering the same locomotives, and complainant contends, therefore, that the billing did not conform to the requirements of this rule.

Defendants contend that, in order to secure the ratings on the respective parts, complainant should have tendered one or more carloads of each of the respective parts, or, failing in this, that such parts as were rated the same should have been grouped and shipped together. If this had been done, all articles rated fifth class would have been charged the fifth-class rate in accordance with rule 10 of the classification. The record shows that this grouping was not made.

Defendants also urge that the bills of lading must govern, and that complainant can not show by parol evidence that the shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading. This contention is without merit. See *Carthage Marble & White Lime Co. v. M. P. R. R. Co.*, 51 I. C. C., 619.

The absence of essential parts not affecting the identity of an article transported does not destroy its fundamental character from a transportation or tariff standpoint. *Lakewood Engineering Co. v. Director General*, 57 I. C. C., 311. These locomotives had been abandoned for seven years and expenditure of approximately \$1,200 on each was sufficient to restore them to service. These facts are indicative of the completeness of the locomotives at time of shipment.

We find that the shipments properly came within the classification description of locomotives, k. d., and that the fourth-class rates were applicable. The complaint will be dismissed.

60 I. C. C.

No. 11457.

MEMPHIS FREIGHT BUREAU FOR BLUMENFELD
COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT.

Submitted October 15, 1920. Decided January 24, 1921.

Rate on mussel shells, in carloads, from Bowling Green, Ky., to Memphis, Tenn.,
found unreasonable. Reparation awarded.

Jas. S. Davant for complainant.*Wm. Burger* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, an association of shippers, on behalf of one of its members, Blumenfeld Company, Incorporated, a corporation of Memphis, Tenn., alleges that the rate of 47.5 cents per 100 pounds charged on one carload of mussel shells shipped July 16, 1919, from Bowling Green, Ky., to Memphis was unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that it exceeded a subsequently established rate of 15.5 cents per 100 pounds. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipment, weighing 31,100 pounds, moved over the Louisville & Nashville, a distance of 263 miles. Freight charges were collected in the sum of \$190, at the applicable class-A rate of 47.5 cents, minimum 40,000 pounds, governed by the southern classification. On December 6, 1919, a commodity rate of 15.5 cents, minimum 40,000 pounds, was established, yielding ton-mile earnings of 11.8 mills.

On the basis of the minimum weight the rate charged yielded 72.2 cents per car-mile and the rate sought would yield 23.6 cents. Complainant cited contemporaneous commodity rates to Memphis of 12.5 cents from Nashville, Tenn., 230 miles; 16.5 cents from Rockport, Ky., 275 miles; and 12.5 cents from Clarksville, Tenn., 199 miles; which yield revenues of 10.9, 12, and 12.6 mills per ton-mile, and 21.7, 24, and 25.1 cents per car-mile, respectively. Rates of 8.5 cents on sand and gravel and of 8 cents on stone from Bowling Green

60 I. C. C.

to Memphis were also cited. Mussel shells may be loaded in any kind of car and are not liable to injury. Those shipped cost at Bowling Green about \$27 per ton.

No evidence was offered by defendant.

We find that the rate assailed was unreasonable to the extent that it exceeded 15.5 cents per 100 pounds; that Blumenfeld Company, Incorporated, made the shipment as described, and paid and bore the charges thereon; that it has been damaged in the amount that the charges paid exceeded those which would have accrued at the rate herein found reasonable, and that it is entitled to reparation in the sum of \$128, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11332.
 NEWTON OIL MILL
 v.
 DIRECTOR GENERAL, AS AGENT, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
 NOS. 601, 4218, AND 4219.

Submitted October 13, 1920. Decided January 24, 1921.

1. Rates on cotton seed, in carloads, from various points in Louisiana to Newton, Miss., found not unduly prejudicial or unreasonable, except rates basing on Rayville, La. These found unreasonable, reasonable rates prescribed, and reparation awarded.
2. Fourth section relief denied.

Thomas P. Goodwin for complainant.

O. C. P. Rausch for Missouri Pacific Railroad and Director General of Railroads, as Agent.

H. W. Crittenden for Alabama & Vicksburg Railway, Vicksburg, Shreveport & Pacific Railway, and Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, manufactures cottonseed products at Newton, Miss. By complaint filed March 19, 1920, it alleges that the rates charged on 56 carloads of cotton seed shipped between September 20, 1916, and January 1, 1918, from various points in Louisiana to Newton, were unreasonable and unduly prejudicial. Violations of the fourth section of the act are also alleged. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in cents per 100 pounds and "present" rates are those in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments originated at points on the Missouri Pacific and moved in connection with the Vicksburg, Shreveport & Pacific and the Alabama & Vicksburg, hereinafter collectively called the Queen & Crescent, which extends eastward from Shreveport, La., through Newton and intersects the Missouri Pacific at Monroe, Rayville, and Tallulah, La. Calvit, one of the points of origin, is the terminus of a branch which connects at Eudora, Ark., with the river line of the Missouri Pacific, extending from Eudora through Tallulah. Mer Rouge and Collinston, other points of origin, are north of Monroe, the former being local to the line extending through Monroe, and Collinston being the junction of that line and the New Orleans & Northwestern division, hereinafter called the Northwestern division, which passes through Rayville. The remaining points of origin are on the Northwestern division and all except Oak Ridge are south of Rayville. The rates applicable were the lowest available combinations.

During the period of movement the Missouri Pacific maintained and now maintains a scale of distance commodity rates from various points on its lines to points listed in its tariff as "oil mill stations," including Monroe and Tallulah. These rates were not restricted to local application and were and are available as factors in constructing through rates on traffic moving by way of such points. The applicable factors to Rayville were and are class-A rates, materially higher than the distance rates. The factors east of the junctions were and are materially higher from Monroe and Tallulah than from Rayville, which lies between them. Thus, although a proportional rate of 11 cents applied from Monroe on traffic originating at specified river landings, a local rate of 16 cents applied from that point and from Tallulah on traffic not so originating, and a proportional rate of 11 cents from Rayville on traffic originating on the Northwestern division. Vidalia, La., and Natchez, Miss., are also named in the tariff of the Missouri Pacific as oil mill stations. The distance rates applied to Vidalia, and the rate to Natchez during the period in question was an arbitrary of 3.25 cents over Vidalia. Beyond Natchez a rate of 10 cents applied to Newton in connection with the Yazoo & Mississippi Valley and its connections.

One of the shipments moved from Calvit and the applicable rate was 26 cents, 10 cents to Tallulah, plus 16 cents beyond. The following table shows various facts pertaining to the other shipments, including the respective combination rates basing on certain of these junctions, in effect when the shipments moved:

60 I. C. C.

Points of origin.	Number of shipments.	Junction at which shipments apparently were interchanged.	Combination basing on Rayville. ¹			Combination basing on Monroe. ¹			Combination basing on Natchez.		
			To junction.	Beyond.	Total.	To junction.	Beyond.	Total.	To junction.	Beyond.	Total.
Archibald.....	1	Rayville.....	Cents. 13	Cents. 11	Cents. 24	Cents. 8	Cents. 16	Cents. 24	Cents. 12.25	Cents. 10	Cents. 22.25
Mangham.....	12	do.....	16	11	27	8	16	24	12.25	10	22.25
Baskin.....	5	do.....	18	11	29	8	16	24	12.25	10	22.25
Winnaboro.....	1	do.....	20	11	31	9	16	25	11.25	10	21.25
Gilbert.....	5	do.....	23	11	34	9	16	25	11.25	10	21.25
Wisner.....	11	do.....	24	11	35	9	16	25	11.25	10	21.25
Oak Ridge.....	2	Rayville.....	13	11	24	7	16	23	12.25	10	22.25
Collinston.....	9	Monroe.....	18	11	29	6	16	22	12.25	10	22.25
Mer Rouge.....	7	do.....	18	11	29	6	16	22	12.25	10	22.25
	2	do.....	20	16	36	7	16	23	12.25	10	22.25

¹ Effective June 25, 1918, these rates were increased by the Director General of Railroads, and the distance rates to Monroe and class-A rates to Rayville became from 1.5 to 2.5 cents and from 3.5 to 6 cents higher respectively, than the rates in effect prior to that date, while the proportional rate beyond Rayville and the local rate beyond Monroe and Tallulah became 14 cents and 20 cents, respectively.

It thus appears that the rates basing on Natchez formed the lowest combination from points south of the Queen & Crescent, and the Monroe combination the lowest from points north of that line other than Calvit.

Complainant routed three of the shipments from Collinston through Monroe and five from Baskin, four from Mangham and three from Wisner through Rayville. No junction point was specified in connection with the remainder. There is nothing to support complainant's contention that the Monroe combination applied on shipments interchanged at Rayville, but, with the exception of those routed by complainant through Rayville, which must be construed as calling for interchange at that point, all the shipments originating south of the Queen & Crescent were misrouted in not having been forwarded through Natchez.

Complainant attacks as unduly prejudicial the factor beyond Monroe and the factors to Rayville and as unreasonable the last-named components. The factor beyond Monroe is assailed in part because of the proportional rate from that point on traffic originating at the river landings but mainly because of the proportional rate applying from Rayville. The representative of the Queen & Crescent testified that it was intended to establish from Monroe and Tallulah a proportional rate of 14 cents, the same as then in effect from Rayville. Complainant's main cause of dissatisfaction with the prevailing adjustment grows out of the class-A rates to Rayville on traffic there interchanged. It points to the relatively lower rates to Monroe applicable on traffic for beyond, and to the inclusion of Natchez, Lake Providence, and St. Joseph, La., among the listed "oil mill stations," although no oil mills are located at those points. It also directs

attention to the unnecessary haul of 58 miles from Rayville around the triangle through Collinston and Monroe and back to Rayville on shipments originating south of the Queen & Crescent and interchanged at Monroe, and to the importance of routing shipments from these points directly through Rayville, because cotton seed loaded in box cars readily heats and expedition of movement is necessary.

For the Missouri Pacific it was testified that when the distance rates were established oil mills were operated at each of the points named in its tariff as an oil mill station and that the tariff will be revised to eliminate points at which mill operation has been discontinued; that its class rates are on a reasonable level; and that its distance rates, which are in the nature of inbound rates to the transit point, are maintained on a basis materially lower than the class basis in order to attract to its rails the outbound haul to St. Louis and other destinations. It asserts that this arrangement is not exceptional, or peculiar to its line, and that there are innumerable similar transit arrangements in effect in this territory. But the record discloses that during the period of movement its distance rates applied generally on interstate traffic from and to points on its lines in Arkansas; that they were no lower than distance rates maintained by the Texas & Pacific, the Chicago, Rock Island & Pacific, and the Missouri, Kansas & Texas of Texas, lines which connect with the Queen & Crescent west of Monroe; that the scale of the last-named carrier was prescribed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, for a one-line haul on cotton seed to or from points in Texas interstate common-point territory; and that these various rates are not so restricted as to be inapplicable in making through rates in connection with the Queen & Crescent. Under the distance scale the rates to Rayville from points of origin other than Calvit would have been from 5 to 8 cents.

The defense of the Missouri Pacific is directed more particularly to the aggregate rates than to the components. The distances to Rayville from points of origin other than Calvit vary from 9 to 37 miles, while that from Rayville to Newton is 164 miles. This defendant compares the aggregate rates with rates on cotton seed to Vicksburg, Miss., from points on its line, formerly the St. Louis, Iron Mountain & Southern, approved by us in *Refuge Cotton Oil Co. v. St. L., I. M. & S. Ry. Co.*, 27 I. C. C., 117. From McGehee, Ark., the point most distant from Vicksburg of any there under consideration, the distance is 112 miles and a rate of 15 cents was found reasonable. Despite the rule that ton-mile earnings should ordinarily decrease as the mileage increases, the earnings under the rates assailed constructed on the Rayville combination are higher than the earnings at the 15-cent rate approved from McGehee to Vicksburg.

The present rate of the Queen & Crescent from Newton to Monroe is 20 cents, the same as the eastbound rate, but the factors applicable from Rayville and Monroe are 17.5 and 11.5 cents lower, respectively, than the present class-A rate of 31.5 cents applicable from Newton to Rayville. It would appear from the record that the primary object of the Missouri Pacific adjustment is protection against the Queen & Crescent, "so as to not have that particular railroad scalp its local territory * * *."

It appears that from certain points in Louisiana on the Missouri Pacific higher rates apply on this traffic to Newton when interchanged at Rayville than apply from more distant points of origin on the same line on traffic interchanged at Monroe, the haul via Rayville being included within the haul via Monroe. This adjustment is in contravention of the fourth section of the act, but was protected by applications No. 601 filed by the Vicksburg, Shreveport & Pacific and Nos. 4218 and 4219 filed by the Missouri Pacific, heard with the complaint. No sufficient justification is offered in defense of this situation and to the extent that the applications are here considered they are denied.

We find that the rates assailed are not shown to have been or to be unduly prejudicial, and, with the exception of the combinations basing on Rayville, are not shown to have been or to be unreasonable, but that the aggregate rates basing on Rayville were and are unreasonable to the extent that the factors to Rayville exceeded or may exceed the distance commodity rates contemporaneously maintained to the so-called oil mill stations on the Missouri Pacific; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued upon the basis herein found reasonable; and that it is entitled to reparation with interest. The exact amount of reparation due can not be determined on this record and complainant should comply with rule V of the Rules of Practice.

As the basis upon which reparation is here awarded is lower than the lowest combination applicable to the shipments further consideration need not be given to the question of damage due to misrouting.

Appropriate orders will be entered.

60 I. C. C.

No. 11498.

INDIAN REFINING COMPANY, INCORPORATED,
v.
DIRECTOR GENERAL; AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY,
ET AL.

PORTIONS OF FOURTH SECTION APPLICATIONS
NOS. 2043, 2045, AND 1833.

Submitted October 20, 1920. Decided January 24, 1921.

Rate on petroleum gas oil, in carloads, from Lawrenceville, Ill., to Clayton, Miss., found unreasonable. Reparation awarded. Fourth section relief denied.

W. H. Miller for complainant.

A. P. Humburg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation refining crude petroleum at Lawrenceville, Ill., alleges that the rate charged on a carload of petroleum gas oil shipped from Lawrenceville, Ill., to Clayton, Miss., on July 29, 1919, was illegal, unreasonable, unduly prejudicial, and in violation of the fourth section of the interstate commerce act. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in cents per 100 pounds.

The shipment weighed 43,217 pounds and moved as routed over the Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, to Cairo, Ill., the Illinois Central to Memphis, Tenn., and the Yazoo & Mississippi Valley to destination. Freight charges were collected in the sum of \$257.14 on the basis of a rate of 59.5 cents. The rate applicable was a joint commodity rate of 58.5 cents and the shipment was overcharged \$4.32.

A joint rate of 22.5 cents contemporaneously applied on petroleum and its products over the route of movement to Friars Point, Miss., and other Mississippi River points beyond Clayton. Com-

60 I. C. C.

plainant maintains that this rate also applied to Clayton by virtue of the intermediate clause of the governing tariff, but if not so interpreted, contends that the rate applicable was unreasonable to the extent that it exceeded the rate of 40.5 cents subsequently established. The present rate is not attacked.

The intermediate clause provided in substance that where rates were published to two points named in the tariff the rate applicable to a point lying directly between those points but not indexed in the tariff would be that to the higher rated of the two named points. The tariff further provided that this rule would not apply: "In connection with Illinois Central Railroad, (Lines south of the Ohio River)" and other lines named, not including the Yazoo & Mississippi Valley. Clayton, a local point on the last-named road, was not indexed in the tariff. Complainant contends that the restriction only eliminated the application of the rule with respect to traffic destined to points on the lines of the carriers named in the exception and did not prohibit its application to traffic handled by such lines as intermediate carriers. The wording of the exception is too broad to sustain complainant's contention.

At the time the shipment moved the local commodity rates to and from Memphis over the route of movement, 16.5 cents to Memphis and 28.5 cents beyond, aggregated 45 cents, and each of these rates exceeded by 4.5 cents the rates in effect prior to June 25, 1918. The tariff of the Big Four publishing the rate from Lawrenceville to Memphis provided:

When the total charges on a through shipment are constructed on combination of separately established rates, applying to and from junction point, first determine through combination of rates in effect June 24, 1918, and then increase the through combination of rates 4½ cents per 100 pounds.

The tariff publishing the rate from Memphis to Clayton contained no similar provision. The Illinois Central and Yazoo & Mississippi Valley, however, concurred in the tariff of the Big Four and thus were bound by the rule therein published which prescribed a specific method for constructing combination rates on through shipments. The combination rate of 40.5 cents so constructed, made up of 12 cents to Memphis and 24 cents thence to Clayton, plus the increase of 4.5 cents authorized by the Director General of Railroads and by the tariff of the Big Four, would have been applicable in the absence of a joint rate. Complainant shows that this rate applied prior to June 15, 1919; that the subsequently established rate was constructed in this manner; and that the usual method of making rates on petroleum products to southeastern points from Wood River and Roxana, Ill., and other points competing with Lawrenceville, was by adding only one specific increase to the combination of rates.

There were assigned for hearing with this complaint those portions of Fourth Section Applications Nos. 2043, filed by the Yazoo & Mississippi Valley; 2045, filed by the Illinois Central; and 1833, filed by the Cleveland, Cincinnati, Chicago & St. Louis, by which the carriers named as parties thereto seek authority to continue to charge for the transportation of petroleum and its products from Lawrenceville, Ill., to Helena, Ark., and Greenville, Vicksburg, and Friars Point, Miss., rates which are lower than those contemporaneously maintained on like traffic to Clayton and other intermediate points. Defendants did not attempt to justify the fourth section departures, but stated that they would be removed by tariffs in course of preparation in conformity with our decision in *Memphis-Southwestern Investigation*, 55 I. C. C., 515. The fourth section applications will be denied to the extent here considered.

We find that the joint rate applicable was unreasonable to the extent that it exceeded 40.5 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$82.11, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11280.

LUDLOW MANUFACTURING ASSOCIATES

*v.*DIRECTOR GENERAL, AS AGENT, AND BOSTON &
ALBANY RAILROAD.

Submitted September 18, 1920. Decided January 24, 1921.

Rate on jute and jute butts, in carloads, from East Boston, Mass., to Ludlow Junction, Mass., during federal control, found unreasonable. Reparation awarded.

E. J. Rich for complainant.

John F. Finerty and *A. E. Allen* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Complainants are trustees manufacturing twine, yarn, and cotton-bale covering at Ludlow, Mass. By complaint filed February 20, 1920, they allege that the rate charged on various carloads of imported jute and jute butts shipped from East Boston, Mass., to Ludlow Junction, Mass., during July and August, 1918, was unjust and unreasonable. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the Boston & Albany, 99 miles. Charges thereon were collected at the applicable fifth-class rate of 15.5 cents. Prior to April 11, 1918, an import commodity rate of 5 cents was applicable. On that date it was increased to 6 cents and on June 25, 1918, under general order No. 28 of the Director General of Railroads, was canceled, leaving the fifth-class rate applicable. On October 29, 1918, a commodity rate of 7.5 cents was established on jute butts, and on December 12, 1918, a rate of 10 cents on jute.

Transportation conditions with respect to jute and jute butts are identical. Based on the average weight of complainants' shipments, 52,000 pounds, the 15.5-cent rate yielded \$80.60 per car and 81.4 cents per car-mile.

Defendants admit that the rate charged was unreasonable to the extent that it exceeded 10 cents. That rate would yield \$52 per car and 52.52 cents per car-mile for the average loading of complainants' shipments.

60 L. C. G.

We find that the rate assailed was unreasonable to the extent that it exceeded 10 cents per 100 pounds; that the shipments were made as described; that complainants paid and bore the charges thereon; that they were damaged thereby and are entitled to reparation, with interest, in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable. The exact amount of reparation due can not be determined upon the present record, and complainants should comply with rule V of the Rules of Practice.

60 I. C. C.

No. 10726.

CENTRAL STEEL COMPANY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted October 4, 1920. Decided January 24, 1921.

Rate charged on coal, in carloads, from points in the Kanawha district of West Virginia to Massillon, Ohio, found inapplicable and unlawful; that and the rates applicable found unreasonable, but not unjustly discriminatory, unduly prejudicial, or in violation of section 4 of the act. Reparation awarded.

William W. Collin, jr., and Borders, Walter & Burchmore for complainant.

W. S. Bronson and J. S. Patterson for Chesapeake & Ohio Railway Company and Chesapeake & Ohio Northern Railway Company,
D. P. Williams for Pennsylvania Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation manufacturing steel articles at Massillon, Ohio, alleges, by complaint filed June 20, 1919, that the rate of \$2.98 charged by defendants on numerous carloads of bituminous coal shipped from points in the Kanawha district of West Virginia to Massillon, during the period from July 1 to October 27, 1917, was unreasonable, unjustly discriminatory, and unduly prejudicial, to the extent that it exceeded the rate of \$1.55, subsequently established, and in violation of section 4 of the act to regulate commerce. We are asked to award reparation. Unless otherwise indicated, rates are stated in amounts per net ton, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments moved over the Chesapeake & Ohio to Kenova, W. Va., the Norfolk & Western to Columbus, Ohio, and the Pennsylvania to Massillon. No joint rates were in effect and charges were collected at a combination rate of \$2.98, composed of a commodity rate of \$1.20 from points of origin to Columbus, and 80 per
60 I. C. C.

cent of the sixth-class rate, equivalent to \$1.78, beyond. The rates applicable from Columbus to destination were equivalent to \$1.42 prior to September 20, 1917, and \$1.70 on and after that date. All of the shipments were thus overcharged. All but two moved during October, 1917.

Effective October 27, 1917, defendants published a joint commodity rate of \$1.55, applicable only over the Chesapeake & Ohio to Limeville, Ky., the then newly constructed line of the Chesapeake & Ohio Northern to Columbus, and the Pennsylvania beyond, herein-after called the Limeville route. This rate, increased to \$1.90 under general order No. 28, and now unrestricted as to routing, is not assailed. The average distance from the Kanawha district mines to Massillon over the Limeville route is 337 miles, and the \$1.55 rate yielded 4.6 mills per ton-mile. The route of movement is only 9 miles longer.

Commercial users of coal at Massillon and surrounding territory ordinarily draw their supply from mines in the Pittsburgh district 110 miles distant, from which during the period of movement the rate was \$1.10. The coal from the Kanawha district is said to be of superior quality.

A rate of \$1.55 was contemporaneously applicable to Cleveland, over either the Limeville route or the route of movement, for an average distance greater than to Massillon.

Complainant also refers to the following commodity rates contemporaneously maintained by defendants: \$1.25 from Chesapeake & Ohio mines to stations on the Big Four, Galion, Ohio, to Cleveland, inclusive, applicable via Cincinnati, Ohio, advanced to \$1.55 effective August 30, 1917, following *Bituminous Coal to C. F. A. Territory*, 46 I. C. C., 66; \$1.55 from Norfolk & Western mines in the Kenova-Thacker districts to Massillon, applicable over the same route beyond Kenova as the rate assailed; and \$1.55 to Cleveland from mines on the Sandy Valley & Elkhorn, south of the other districts referred to and farther distant from Cleveland.

Counsel for the Pennsylvania admitted that the factor from Columbus to destination was unreasonable to the extent that it exceeded 73 cents, its division of the rate of \$1.55 subsequently established over the Limeville route and also its division of the \$1.55 rate maintained from the Kenova-Thacker mines on the Norfolk & Western and joined the Chesapeake & Ohio in defending as reasonable a rate of \$1.93, composed of factors of \$1.20 to Columbus and 73 cents beyond. Defendants urge that there is no reason why the Pennsylvania should accept a lower division or join in a relatively lower rate from the Kanawha field than from the Pittsburgh district. The Pennsylvania receives its local rate of \$1.10 from the

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latter district for a haul shorter than from Columbus to Massillon. The \$1.55 rate to Cleveland was made effective via Columbus on December 24, 1917, and the Pennsylvania then accepted 62 cents for its part of the haul, which was approximately 60 miles greater than its haul from Columbus to Massillon. The haul from Columbus to Cleveland would be through Orrville, Ohio, 15 miles west of Massillon. The rate of \$1.93 proposed by defendants is higher than the present rate of \$1.90, which is the \$1.55 rate as increased under authority of general order No. 28. Complainant also calls attention to the fact that since August 15, 1919, the \$1.90 rate has applied over the Norfolk & Western as an intermediate carrier, as well as over the Limeville route. An examination of the tariffs shows that no change in this routing has been made in the six months following the termination of federal control.

Defendants introduced a number of rate comparisons and explained the matter of divisions at length in justification of a rate of \$1.93 as a basis for reparation. These comparisons were offered in support of their contention that the rates from the West Virginia mines to the destination territory here considered are on a relatively low basis, having been established to enable these mine operators to market by-product or special-purpose coal in competition with the less distant Pennsylvania and Ohio mines. The principal reason assigned by the Chesapeake & Ohio for not publishing the \$1.55 rate over the Norfolk & Western route, and its unwillingness to protect that rate now, relates to the matter of divisions.

The Chesapeake & Ohio contends that to apply the rate sought by complainant would have the effect of short-hauling it. Complainant takes the position that if the Chesapeake & Ohio Northern was open it was unreasonable not to apply a rate of \$1.55 while coal moved at this rate over the same route to Cleveland, and, if the Chesapeake & Ohio Northern was not then open, the route of movement was the practicable short-line route, and the Chesapeake & Ohio cannot complain that it was short-hauled. Witness for defendants testified that at the time these shipments moved the Chesapeake & Ohio Northern was in the last stages of construction, and that while it was used to some extent during the summer of 1917 to relieve congestion via the Cincinnati gateway, it was not open for business generally until some months after October 27, the date when the rate to Massillon became effective. It is fair to assume from the testimony of this witness that as an operative matter complainant's traffic could have been handled over this route if rates had been in effect.

We find that the rate charged was unlawful; that the rate charged and the rates applicable were unreasonable to the extent that they exceeded \$1.55 per net ton; that complainant made the shipments as

described and paid and bore the freight charges thereon; that it was damaged in the amount of the difference between the charges collected and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due cannot be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

Neither the rate assailed nor the rates applicable are shown to have been unjustly discriminatory, unduly prejudicial, or in violation of section 4 of the act.

60 I. C. C.

No. 11257.

PROCTER & GAMBLE MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SEABOARD AIR LINE
RAILWAY COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 1573.

Submitted November 1, 1920. Decided January 24, 1921.

1. Rate on cottonseed oil, in tank-car loads, from Carlisle, S. C., to Port Ivory, N. Y., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

H. Ignatius for complainant.

Royal T. McKenna for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing soap and refining vegetable oils at Port Ivory, Staten Island, N. Y., alleges that the rate of 67.5 cents charged by defendants on a tank-car load of crude cottonseed oil shipped January 18, 1919, from Carlisle, S. C., to Port Ivory, was unreasonable and unduly prejudicial to the extent that it exceeded the subsequently established rate of 39.5 cents, and in violation of the long-and-short-haul provision of the act to regulate commerce. We are asked to award reparation. Rates are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipment weighed 61,640 pounds and moved over the Seaboard Air Line, Richmond, Fredericksburg & Potomac, Baltimore & Ohio, Central of New Jersey, and Staten Island Rapid Transit. Freight charges in the sum of \$416.07 were ultimately collected at the applicable sixth-class rate of 67.5 cents.

At the time of movement a commodity rate of 39.5 cents was in effect over the same route to Port Ivory from more distant points. Commodity rates were also applicable from Carlisle to various other

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points. On February 7, 1920, the 39.5-cent rate was established from Carlisle to Port Ivory. Defendants offered no evidence.

In connection with the complaint there were assigned for hearing portions of Fourth Section Application No. 1573, filed by the Seaboard Air Line, by which carriers named as parties thereto asked authority to continue to charge for the transportation of cottonseed oil from Clinton, S. C., to Port Ivory, lower rates than are contemporaneously maintained on like traffic from Carlisle, S. C., and other intermediate points. Defendants offered no evidence in support of this application, and, to the extent that it is here involved, it will be denied.

We find that the rate charged was unreasonable to the extent that it exceeded 39.5 cents per 100 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$172.59, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11430.¹

STANDARD OIL COMPANY (KENTUCKY)

v.

DIRECTOR GENERAL, AS AGENT.

PORTION OF FOURTH SECTION APPLICATION NO. 1952.

Submitted October 13, 1920. Decided January 24, 1921.

1. Rates on crude petroleum, in tank-car loads, from Bowling Green, Ky., and Rugby Road, Tenn., to Louisville, Ky., found to have been unreasonable. Reparation awarded.
2. Fourth section relief denied.

*Charles Van Overbeke and A. M. Stephens for complainant.**Alex. M. Bull for defendant.**E. D. Mohr for Louisville & Nashville Railroad Company.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. These cases present similar issues and were heard together. Complainant, a corporation, alleges that the fifth-class rates charged on crude petroleum shipped in tank cars from Bowling Green, Ky., and Rugby Road, Tenn., to Louisville, Ky., were unjust, unreasonable, and unjustly discriminatory to the extent that they exceeded the subsequently established commodity rates. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

No. 11430 covers 16 carloads shipped between October 25 and November 26, 1918, inclusive, from Bowling Green to Louisville over the Louisville & Nashville and the Kentucky & Indiana Terminal, 113 miles. Freight charges were collected at the applicable fifth-class rate of 40 cents, governed by the southern classification. When the shipments moved a commodity rate of 18.5 cents applied from Scottsville, Ky., to Louisville, 195 miles. Shipments from Scottsville to Louisville pass through Bowling Green. Effective November 28, 1918, a commodity rate of 14.5 cents was published to apply from Bowling Green to Louisville.

¹ This report also embraces No. 11449, Same v. Same.

No. 11449 covers five carloads shipped between October 20, 1919, and February 10, 1920, inclusive, from Rugby Road to Louisville over the Cincinnati, New Orleans & Texas Pacific, the Southern, and Kentucky & Indiana Terminal, approximately 200 miles. Freight charges were collected at the applicable fifth-class rate of 50 cents. Contemporaneously the commodity rate from Scottsville was 16.5 cents, and this rate applied from other Kentucky points for comparable distances. A commodity rate of 17.5 cents from Rugby Road was established effective February 15, 1920.

Defendant concedes the unreasonableness of the rates assailed and expresses willingness to make reparation to the basis of the subsequently established commodity rates.

We find that the rates charged were unreasonable to the extent that they exceeded 14.5 cents per 100 pounds from Bowling Green to Louisville, and 17.5 cents per 100 pounds from Rugby Road to Louisville; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice. We are without authority to order refund of excess war taxes.

In connection with No. 11430 there were assigned for hearing portions of Fourth Section Application No. 1952, filed by the Louisville & Nashville Railroad Company, in which that carrier asks authority to continue to charge for the transportation of crude petroleum, in carloads, on interstate traffic, from Bowling Green to Louisville, rates which are higher than those contemporaneously maintained on like traffic from farther distant points. On behalf of the Louisville & Nashville it was stated that the violation resulting from the application of higher rates from Bowling Green to Louisville than from Scottsville, Ky., had been removed, and that the carrier did not desire any fourth section relief in connection with rates on crude petroleum from Bowling Green to Louisville as compared with rates from more distant points. The application for relief from the provisions of the fourth section will be denied to the extent that it is here involved.

An appropriate order will be entered.

601. C. C.

No. 11481.

SEABOARD OIL & REFINING COMPANY OF TEXAS

v.

DIRECTOR GENERAL, AS AGENT, MORGAN'S LOUISIANA
& TEXAS RAILROAD & STEAMSHIP COMPANY, ET AL.

PORTION OF FOURTH SECTION APPLICATION NO. 628.

Submitted October 15, 1920. Decided January 24, 1921.

1. Rates on sulphuric acid, in tank-car loads, from New Orleans, La., to Orange, Tex., found unreasonable and unlawful. Reasonable maximum rates prescribed and reparation awarded.
2. Fourth section relief denied.

H. L. L'Hommedieu for complainant.*Chas. E. Bland* for intervener.*C. W. Owen* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation refining oil at Orange, Tex., alleges that the rate of 35 cents charged by defendants on a tank-car load of sulphuric acid shipped July 30, 1919, from New Orleans, La., to Orange was unreasonable and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to prescribe a reasonable rate to Orange from New Orleans and all points named in items 4390 and 4420 of agent Leland's tariff I. C. C., 1289, and to award reparation. No evidence was introduced respecting any rate except from New Orleans, and our report will be confined to that rate. That portion of Fourth Section Application No. 628, filed by agent Leland, by which authority is sought to continue rates on sulphuric acid in tank-car loads from New Orleans to Beaumont, Tex., lower than to Orange and other intermediate points was heard with the complaint. The Beaumont Chamber of Commerce intervened on behalf of the Magnolia Refinery at Beaumont. Rates will be stated in cents per 100 pounds.

The shipment weighed 106,500 pounds and moved over the lines of Morgan's Louisiana & Texas Railroad & Steamship Company, 60 I. C. C.

the Louisiana Western, and the Texas & New Orleans. Charges were collected in the sum of \$372.75 at a joint commodity rate of 35 cents.

When the shipment moved defendants maintained a rate of 19 cents on sulphuric acid in tank cars from New Orleans over the same route to Beaumont, Houston, Texas City, and Galveston, Tex., to which Orange is directly intermediate. The maintenance of lower rates to Houston and Texas City than to Orange was not protected by a fourth section application and was and is unlawful. Complainant contends that the rate to Orange should not exceed the rate to Beaumont and the other more distant points in Texas, and reparation is asked to that basis.

Defendants concede that if there had been a substantial movement of sulphuric acid to Orange the 19-cent rate would have been published, but resist the claim for reparation on the ground that this is the only shipment to Orange during a considerable period of time. It is testified on behalf of complainant that the refinery at Orange has a capacity of 1,000 barrels per day and that, although the plant is now closed down, it is expected to resume operation within a short time, and will then use at least two tank-car loads of sulphuric acid per month.

Orange is 278 miles from New Orleans and the rate assessed yielded about 25 mills per ton-mile and \$1.34 per car-mile. The 19-cent rate would yield about 14 mills per ton-mile and 72 cents per car-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded 19 cents and that for the future it will be unreasonable to the extent that it exceeds the rate contemporaneously in effect from New Orleans to Beaumont; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$170.40 with interest.

No justification was offered by defendants for maintaining rates on sulphuric acid from New Orleans to Beaumont lower than to Orange and other intermediate points, and the fourth section application will be denied to the extent that it is involved herein.

Appropriate orders will be entered.

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C. I. C. C.

No. 10927.

SILICA SAND PRODUCERS' TRAFFIC ASSOCIATION OF
ILLINOIS

v.

DIRECTOR GENERAL, CHICAGO, BURLINGTON & QUINCY
RAILROAD COMPANY, ET AL.

Submitted October 22, 1920. Decided February 15, 1921.

On further hearing, see 58 I. C. C., 549, rates on silica sand, in carloads, from the Ottawa district in northern Illinois to points east of the Indiana-Illinois state line, as compared with rates from Gray's Summit, Silica, and Pacific, Mo., to the same destinations, found to subject sand producers in the Ottawa district to undue prejudice and disadvantage to the undue preference and advantage of competing sand producers located at the Missouri points named. Nonprejudicial relationship of rates prescribed.

J. H. Kane and R. E. Riley for complainant.

Kenneth F. Burgess for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

CLARK, *Chairman*:

In our original report, 58 I. C. C., 549, we found, among other things, that the rates on silica sand, in carloads, from the Ottawa district in northern Illinois to points east of the Indiana-Illinois state line, hereinafter termed the eastern destinations, were, as compared with rates from Gray's Summit, Silica, and Pacific, Mo., to the eastern destinations, unduly prejudicial to sand producers in the Ottawa district and unduly preferential of their Missouri competitors, to the extent that the difference in rates from these respective territories of origin exceeded the difference that would exist had the rates from the Missouri points been increased as were the rates from Ottawa pursuant to our decisions in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; and *The Fifteen Per Cent Case*, 45 I. C. C., 303. The case was reopened for further hearing with respect to this finding, and on December 13, 1920, the order entered in connection with the original report was vacated in so far as it related to the above-described relationship of rates.

Upon further hearing complainant submitted exhibits tending to show that, with the adjustment prescribed, its rates would remain relatively higher than those from the Missouri points from the standpoint of distance and ton-mile earnings. The rates from the Ottawa

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district, however, are made from and to grouped points of origin and destination, and are not based upon distance alone. Rates to points of destination, selected at random from several groups, as were those cited by complainant, obviously do not reflect accurately the relationship between the Missouri points and the Ottawa district. Moreover, little, if any, sand moves from the Missouri points to the eastern destinations.

Following *Increased Rates, 1920*, 58 I. C. C., 220, the rates were increased 40 per cent from the Ottawa district and 33½ per cent from the Missouri points. As a result the rates to certain eastern destinations are lower from Missouri points than from the Ottawa district. Complainant's contention that the same percentage of increase should be applied to the Missouri rates as was applied to rates from its district is sustained.

We find that the rates assailed are and will be unduly prejudicial to sand producers in the Ottawa district and unduly preferential of their Missouri competitors to the extent that the differences in rates from these respective territories of origin are or may be more favorable to the Missouri points than the difference that would exist had the rates from the Missouri points been increased as were the rates from the Ottawa district pursuant to our decisions in *The Five Per Cent Case, supra*, and *The Fifteen Per Cent Case, supra*, and had the resulting rates from the Missouri points been increased 40 per cent as were the rates from the Ottawa district following *Increased Rates, 1920, supra*. The general increases subsequent to our decisions in *The Five Per Cent Case* and *The Fifteen Per Cent Case* should be computed before computing the 40 per cent increases.

An appropriate order will be entered.

60 I. C. C.

No. 11057.

SPARR FRUIT COMPANY

v.

RIO GRANDE, EL PASO & SANTA FE RAILROAD
COMPANY, DIRECTOR GENERAL, ET AL.

Submitted October 29, 1920. Decided February 3, 1921.

Carload of lemons shipped from Fillmore, Calif., to El Paso, Tex., found not to have been misrouted. Charges thereon found illegal but not unreasonable or unjustly discriminatory. Refund of overcharge directed. Complaint dismissed.

Roy R. Waterbury for complainant.
Elmer Westlake for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint seasonably filed complainant alleges that defendants misrouted a carload of lemons, shipped July 13, 1917, from Fillmore, Calif., and originally destined to Chicago, Ill., but diverted in transit to El Paso, Tex., and that by reason of such misrouting complainant was subjected to the payment of charges which were unjust, unreasonable, and unjustly discriminatory, and asks for reparation. Rates will be stated in amounts per 100 pounds. This case was submitted upon an agreed statement of facts supplemented by evidence introduced by defendants. Complainant was represented at the hearing by counsel but offered no evidence.

Fillmore is on a branch line of the Southern Pacific. Complainant, the consignor, made request on that road for two dry refrigerator cars, the destination shown in the equipment order being merely "East." One of the cars furnished in response to that request was owned by the Santa Fe Refrigerator Dispatch Company, which operates refrigerator cars on the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe. The stipulation shows that the agent of the Southern Pacific informed complainant that if the Santa Fe car were used it would be necessary to route it over the Santa Fe.

Complainant loaded the car with lemons and consigned the shipment to Chicago, the routing shown in the bill of lading being "S. P.

60 I. C. C.

to Colton—Santa Fe.” After the shipment had been delivered to the Santa Fe at Colton, Calif., it was diverted to El Paso upon complainant’s request.

The shipment weighed 28,224 pounds, and freight charges in the sum of \$330.22 were collected, based on a combination rate of \$1.17. The combination rate applicable was \$1.1075, composed of a commodity rate of 8.75 cents from Fillmore to Los Angeles, Calif., the class-C rate of 12 cents to Colton, and a commodity rate of 90 cents beyond. The shipment was overcharged \$17.64. If the shipment had been routed over the Southern Pacific direct and diverted thence to El Paso a rate of 98.75 cents would have applied.

Complainant’s claim of misrouting is based on the contention that because of the insistence of the Southern Pacific that the shipment be routed over the Santa Fe complainant was prohibited from taking advantage of the lower rate to El Paso over the Southern Pacific. It appears that there was an understanding between the Southern Pacific and the Santa Fe that shipments in borrowed refrigerator equipment should be routed over the owning line; but it was testified for defendants that this was not an inflexible rule, or one binding upon shippers, and that if complainant had insisted upon routing this shipment over the Southern Pacific and it had been sent over the Santa Fe, a clear case of misrouting would have been presented. The record does not establish that the consignor objected to routing the shipment over the Santa Fe, nor does the bill of lading show that the Santa Fe routing was inserted under protest. The rate to the original billed destination, Chicago, was the same by both the Santa Fe and Southern Pacific routes.

No evidence was offered in support of the allegation of unjust discrimination. The freight charges were paid by the consignee at El Paso and it is not established that they were borne by complainant.

Upon this record we find that the shipment was not misrouted, and that the charges applicable were not unreasonable or unjustly discriminatory. Defendants should promptly refund the overcharge, with interest. The complaint will be dismissed.

60 I. C. C.

No. 11347.

SOUTHERN FUEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BAUXITE & NORTHERN RAILWAY COMPANY, ET AL.

Submitted November 23, 1920. Decided February 3, 1921.

Rate applicable on chestnut coal in carloads from Brewer, Okla. to Bauxite, Ark., found not unreasonable or otherwise unlawful. Complaint dismissed.

A. J. Stone for complainant.

R. C. Trevillion for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation mining and distributing coal, with main office at Dallas, Tex. It alleges that the charges collected on 25 carloads of chestnut coal shipped from Brewer, Okla., to Bauxite, Ark., in January and February, 1919, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded charges which would have accrued at a rate of \$1.90. It asks reparation only. Rates are stated in amounts per net ton and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Brewer is a local station on the Missouri, Kansas & Texas, hereinafter called the M., K. & T., 10 miles south of McAlester, Okla. Bauxite is about 22 miles southwest of Little Rock, Ark. The shipments were delivered to the M., K. & T., consigned to the American Bauxite Company at Bauxite, which is served by the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, and the Bauxite & Northern, the latter not under federal control. The tracks of each carrier reach consignee's plant. No routing instructions were given. The shipments moved over the M., K. & T. to McAlester, and the Rock Island to Gibbon Junction, Ark., 0.7 of a mile east of Bauxite, where they were turned over to the Bauxite & Northern, in accordance with instructions of the consignee to the agent of the Rock Island at Bauxite dated January 1, 1916, reading as follows:

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This will be your authority to turn over to the Bauxite & Northern Railway Company, coal, machinery, and other carload material destined to the American Bauxite Company now on hand or in future shipments, on which the Bauxite & Northern delivery is not shown, and if there is additional freight by virtue of such delivery it will be borne by us.

Charges were collected based on rates of \$2.75 on 5 of the shipments and \$2.40 on the remaining 20, for which there was no tariff authority. There was no joint rate in effect and the applicable combination rate was \$2.80, composed of commodity rates of 85 cents from Brewer to McAlester and \$1.55 beyond, plus the increase of 40 cents made under general order No. 28 of the Director General of Railroads. The shipments were undercharged. When the shipments moved a joint rate of \$1.90 was applicable from Brewer to Bauxite for Rock Island delivery. Effective August 31, 1919, this rate was established over the route of movement.

The distance traversed from Brewer to Bauxite was 265 miles and the \$2.80 rate yielded earnings of 10.6 mills per ton-mile. The \$1.90 rate would yield 7.2 mills. Complainant shows that when these shipments moved the latter rate applied to Bauxite for Bauxite & Northern delivery from mines on the Rock Island in the same rate group with Brewer.

Defendants urge that the rate applicable was not unreasonable for a three-line haul and submitted an exhibit showing earnings of from 11 to 14 mills per ton-mile under rates from Brewer to points in Texas for three-line hauls for comparable distances, as well as ton-mile earnings of from 11 to 12.6 mills for three-line hauls on coal from Brewer to Oklahoma destinations.

We find that the rate applicable was not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

60 L. C. C.

No. 10947.¹

CAMBRIA STEEL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, NORTHERN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted October 18, 1920. Decided February 15, 1921.

Rates on manganese ore in carloads from Phillipsburg, Mont., to Wharton, N. J., and Johnstown, Pa., found to have been unduly prejudicial. Reparation denied.

Frederic L. Ballard for complainants.

B. W. Scandrett and *D. F. Lyons* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, Commissioner:

This proceeding was made the subject of a proposed report. Exceptions were filed by complainants and oral argument was had.

Complainants are corporations engaged in the iron and steel business, the Cambria Steel Company operating a plant at Johnstown, Pa., with principal offices at Philadelphia, Pa., and the Wharton Steel Company operating a plant and maintaining its principal offices at Wharton, N. J. By complaints seasonably filed they allege that the rates charged by defendants for the transportation of numerous carload shipments of manganese ore from Phillipsburg, Mont., to Johnstown and Wharton were unreasonable and unduly prejudicial, in violation of sections 1 and 8 of the act to regulate commerce and section 10 of the federal control act. Reparation only is sought. Except as otherwise noted rates are stated throughout this report in amounts per ton of 2,000 pounds.

The points alleged to have been unduly preferred are Butte, Helena, East Helena, Steadman, Norris, and Anaconda, Mont., and Pittsburgh, Pa. Phillipsburg is on a branch line of the Northern

¹ This report also embraces No. 10947 (Sub-No. 1), Cambria Steel Company v. Same.
60 I. C. C.

Pacific Railway, 26 miles south of Drummond, Mont., the junction with the main line. Wharton is on the main line of the Delaware, Lackawanna & Western Railroad, about 41 miles west of New York, N. Y. Johnstown is on the main line of the Pennsylvania Railroad 75 miles east of Pittsburgh. The originating points alleged to have been unduly preferred are east of Philipsburg on the Northern Pacific, averaging 88 miles less than Philipsburg to eastern points. Butte, Helena, and East Helena are on the main line, and Steadman, Norris, and Anaconda are on branch lines of the Northern Pacific. Butte is also served by the Great Northern Railway, Chicago, Milwaukee & St. Paul Railway, and Union Pacific system, and Helena by the Great Northern Railway.

The shipments to Wharton consisted of 286 carloads, weighed 22,296,980 pounds, and moved during the period September 29, 1917, to March 6, 1918, inclusive, over the Northern Pacific and its connections to Chicago, Ill., thence apparently over the Michigan Central or New York, Chicago & St. Louis railroads to Buffalo, N. Y., and Delaware, Lackawanna & Western Railroad to destination, about 2,503 miles. Transportation charges to Wharton were collected in the sum of \$144,547.03, based on the Chicago combination of \$12.85 per net ton. An examination of the tariffs shows that a combination rate of \$11.60 per ton, composed of \$1.45 to Butte or East Helena and \$10.15 beyond, was legally applicable and the shipments have been overcharged. The \$1.45 rate was subject to a 60,000-pound minimum, with a proviso for increasing the rate an additional 10 per cent for shipments weighing under 60,000 but not less than 50,000 pounds, except when, for carrier's convenience, a car of less capacity was furnished. Some of the shipments weighed less than 60,000 and over 50,000 pounds, but the record shows that the ore always loaded to capacity of car furnished. The \$10.15 rate was subject to a minimum of 40,000 pounds.

Defendants contemporaneously published a joint commodity rate of \$10.15 from Butte, East Helena, Steadman, and Anaconda to Wharton and New York rate points, and on January 23, 1918, the same rate was established from Helena. Subsequent to the movement this rate was increased to \$12.70 under general order No. 28 of the Director General of Railroads, and, on September 16, 1918, at the request of the War Industries Board, the \$12.70 rate was reduced to \$10.50 and extended to include Philipsburg, for the purpose of encouraging the production of manganese ore at western producing points. The following table shows joint commodity rates from Butte in effect when the shipments moved, contrasted with the combination rate of \$11.60 from Philipsburg to Wharton. These

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comparisons are based on 41.9 tons per car, the average loading of the shipments, and approximate short-line distances.

	Dis- tances.	Rates per ton.	Revenue.	
			Per ton- mile.	Per car- mile.
Butte to—	<i>Miles.</i>		<i>Miles.</i>	<i>Cents.</i>
New York, N. Y.	2,435	\$10.15	4.2	17.5
Philadelphia, Pa.	2,343	9.75	4.2	17.4
Baltimore, Md.	2,323	9.55	4.1	17.2
Norfolk, Va.	2,478	9.55	3.9	16
Worcester, Mass.	2,514	10.55	4.2	17.6
Buffalo, N. Y.	2,051	9.40	4.6	19.2
Pittsburgh, Pa.	1,994	9.40	4.7	19.8
Philipsburg to—				
Wharton, N. J.	2,503	11.60	4.6	19.4

Manganese ore is valued at \$30.76 per ton. Prior to 1917 little if any moved from Montana to points east of Chicago, because it was cheaper to use imported ore, but, due to the war and the resulting restrictions upon importations, the use of domestic ore became necessary. There is no likelihood of future shipments from and to the points in controversy. During the period covered by the complaints it is shown that there was a relatively small movement of manganese ore from Philipsburg to Lebanon, Pa.; Butte to Pittsburgh; Helena to South Chicago, Ill.; and Butte and Norris to Ensley, Ala. These shipments are said to have been for use by complainants' competitors. For at least a portion of the time covered by the complaints the government fixed the prices of iron and steel products, and complainants state that it was impossible to add to their selling prices freight charges in excess of those alleged to have been paid by their competitors.

To Chicago and Peoria, Ill., St. Louis, Mo., and Gary, Ind., and after November 17, 1917, to Pittsburgh, the rates on manganese ore from Philipsburg were no higher than from the other Montana points mentioned, and complainants urge that for the longer hauls to eastern points any different basis is not justified. Rates from Black Eagle, Mont., on the Great Northern approximately equidistant from eastern points were lower than the rates from Butte and other Montana points referred to. The \$10.15 rate on manganese ore from Butte was also applicable on smelter products, including lead bullion, bar and pig copper, and other ores more valuable than manganese ore.

Defendants urge that the \$10.15 rate applied on ore generally from Butte and other Montana points, and insist that this rate was extremely low, due to competition between carriers and producers of various sections of the country. They refer to our finding in *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723, where 60 I. C. C.

we found justified an increase in the rates on smelter products from Montana points to eastern points in an amount greater than the 25 per cent increase applied on other commodities under general order No. 28 of the Director General of Railroads, including an increase in the rate of \$10.15 from Montana points to New York to \$16.50.

Defendants also compared rates on ore with rates on grain and lumber, showing from Philipsburg to Wharton and Johnstown under the rates sought by complainants greater revenue per ton-mile and per car-mile on grain and lumber than on ore. They urge that as lumber and grain constitute a substantial portion of the tonnage of the lines from the territory under consideration, and as the rates are upon a low level, rates on manganese ore should be higher, although the value of grain is greater than that of manganese ore. Complainants urge that manganese ore should take lower rates than either grain or lumber, and show rates on lumber in eastern territory which were higher than rates between the same points on manganese ore.

The shipments to Johnstown consisted of 650 carloads, weighed 55,453,228 pounds, and moved over defendants' lines during the period September 15, 1917, to November 19, 1918, inclusive. Johnstown is about 2,069 miles from Philipsburg. Transportation charges were collected in the sum of \$319,637.50, based on the applicable rates shown in the following table:

Periods.	Rates from Philipsburg to—	
	Johnstown.	Pittsburgh.
Sept. 15, 1917, to Nov. 16, 1917.....	¹ \$10.59	\$10.32
Nov. 17, 1917, to Dec. 9, 1917.....	² 10.24	9.40
Dec. 10, 1917, to June 24, 1918.....	³ 10.00	9.40
June 25, 1918, to Sept. 14, 1918.....	⁴ 12.60	11.80
Sept. 15, 1918, to Nov. 19, 1918.....	⁴ 10.50	9.50
Since Nov. 20, 1918.....	⁴ 9.80	9.80

¹ Based on Chicago combination: minimum, 60,000 pounds to Chicago; 56,000 pounds beyond.

² Based on Pittsburgh combination: minimum, 60,000 pounds to Pittsburgh; 56,000 pounds beyond.

³ Joint rate made by adding arbitrary to Pittsburgh rate, minimum, 60,000 pounds.

⁴ Joint rate, minimum, 60,000 pounds.

Prior to November 17, 1917, defendants maintained a joint commodity rate of \$9.40 from Butte and the other Montana points to Pittsburgh, and on that date the \$9.40 rate was established from Philipsburg to Pittsburgh.

Complainants contend with respect to four of the shipments which moved to Johnstown prior to November 17, 1917, that the combination rate of \$10.59 legally applicable from Philipsburg should not

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have exceeded \$9.70, which is composed of the \$9.40 rate contemporaneously in effect from Butte and related points to Pittsburgh, plus an arbitrary of 30 cents; and further contend that after November 16, 1917, the Pittsburgh rates, plus an arbitrary of 30 cents, should have been applied to the remaining 646 shipments, and that the charges collected were unreasonable and unduly prejudicial to that extent. Pittsburgh is generally in group B on traffic from Montana and transcontinental territory, while Johnstown is in group A extending east of the Buffalo-Pittsburgh line to the Atlantic seaboard. Rates to group-A points are usually higher than to group-B points. It is urged that defendants customarily grouped Philipsburg with Butte in making rates on manganese ore to Pittsburgh, Chicago, Peoria, Ill., and St. Louis, Mo., but an examination of the tariffs in effect prior to June 25, 1918, shows that, while the rates to these points from Philipsburg and Butte were the same, they were individual and not group rates, and that there was no established relationship between the rates from Philipsburg, Butte, and the other Montana points to eastern destinations. For example, the rates contemporaneously in effect on manganese ore from Philipsburg to St. Paul and Minneapolis, Minn., Duluth and Superior, Wis., and Omaha, Nebr., were 50 cents higher than the rates from Butte and related points, and the class and commodity rate adjustment from Philipsburg was also higher than from Butte.

As to the reasonableness of the rates to Johnstown complainants rely upon the same showing as with respect to rates to Wharton, and upon the further contention that rates to Johnstown should not have exceeded the rates to Pittsburgh by more than 30 cents per net ton, based on the ground that the rates on other commodities, including ores, pig iron, billets, iron and steel articles from various points, including St. Louis, Chicago, and western points, to Johnstown are usually made by the addition of arbitraries of from 12 to 30 cents per ton to the rates to Pittsburgh, and from eastern points the rates to Johnstown are arbitraries lower than the rates to Pittsburgh.

As a general proposition on long-haul traffic, group rates may be more extensive than where short hauls are the rule, yet it does not necessarily follow in instances where a group rate is extended that the subsequent reduction establishes unreasonableness of the rate formerly in effect. The fact that Philipsburg, Butte, and other Montana points enjoyed identical rates to Chicago and some eastern points, and that the rates on pig iron, billets, iron and steel articles, and other commodities from certain points to Johnstown were usually made by the addition of arbitraries over the Pittsburgh rates is not a sufficient basis upon which to predicate a finding that the

rates assailed were unreasonable under section 1, especially in view of the low ton-mile and car-mile revenues.

Rates on ore from Montana points were increased on June 25, 1918, but were afterwards reduced to approximately the same basis as was previously in effect in order to encourage production at western points at a time when importation was small. Such rates, while voluntarily established, can not from the mere fact of their maintenance, be held to be reasonable rates.

We are of the opinion and find that the rates assailed are not shown to have been unreasonable, but that the legally applicable rate from Philipsburg to Wharton was unduly prejudicial to the extent that it exceeded the rate of \$10.15 per net ton contemporaneously in effect to Wharton from Butte, Helena, East Helena, Steadman, Norris, and Anaconda, and that the rates legally applicable from Philipsburg to Johnstown were unduly prejudicial to the extent that they exceeded by more than 30 cents per net ton the rates contemporaneously applicable to Pittsburgh.

The undue prejudice found to have existed is not shown to have resulted in damage to complainants, and the prayer for reparation is denied. No order for the future is necessary. Upon receipt of advice that the overcharges have been refunded, the complaints will be dismissed.

60 I. C. C.

No. 10941.

TEXAS COTTON SEED CRUSHERS' ASSOCIATION ET AL.

v.

DIRECTOR GENERAL, AS AGENT, NORTHERN PACIFIC
RAILWAY COMPANY, ET AL.

Submitted October 20, 1920. Decided February 3, 1921.

Rate on copra, in carloads, from Seattle and Tacoma, Wash., to Dallas, Tex.,
found unreasonable. Reparation awarded.

Stuart R. Barnett and Adams Colhoun for complainants.

C. S. Burg and A. H. McKnight for defendants.

John F. Finerty and Alex. M. Bull for Director General of Rail-
roads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the
examiner.

Complainants, on behalf of the Planters Cotton Oil Company, a
corporation at Dallas, Tex., by complaint filed October 6, 1919, at-
tacks as unjust and unreasonable a rate of \$1.125 per 100 pounds
assessed on 23 carloads of copra shipped to Dallas from Seattle and
Tacoma, Wash., between July 6 and August 26, 1918, inclusive.
Reparation is sought to the basis of a rate of 85 cents which became
effective on September 16, 1918. Rates will be stated in amounts
per 100 pounds, and do not include the increases authorized in *In-
creased Rates, 1920*, 58 I. C. C., 220.

The shipments averaged about 69,200 pounds per car and moved
over defendants' lines. Charges were collected at the applicable
commodity rate of \$1.125, minimum 40,000 pounds.

An import rate of 55 cents, minimum 40,000 pounds, applied from
Pacific coast terminals to points in many states, including Texas,
from August 1, 1916, until June 25, 1918, when all import rates were
canceled pursuant to general order No. 28 of the Director General of
Railroads, leaving applicable on copra only the domestic fifth-class
rate of \$2.19. Effective July 1, 1918, the rate on copra was reduced
to \$1.125, and on September 16, 1918, to 85 cents. The rate of \$1.125

was 104.6 per cent higher and the present rate of 85 cents is 54.5 per cent higher than the 55-cent rate formerly in effect.

In April, 1918, the transcontinental lines determined to increase to 90 cents the rate on all commodities from which vegetable oils are extracted, that being the westbound rate on copra, linseed, palm, and other oils from interior points to California terminals. The rate of \$1.125 was based upon this proposed rate of 90 cents increased by 25 per cent, and applied on both copra and copra oil. This adjustment was not satisfactory to the crushers of copra. They asked the Railroad Administration to make the rate on copra 68 or 70 per cent of the copra oil rate to enable them to compete with the imported oils. The 85-cent rate thereupon published was about 75 per cent of the rate on oil. Effective May 29, 1919, the import rate on coconut oil was reduced to 90 cents.

For complainants it was testified that the short-line distance to Dallas from Seattle is 2,367 miles, and from Tacoma 2,329 miles; and that the rate of \$1.125 from Seattle yielded 9.5 mills per ton-mile, and, based upon the average loading of the shipments, 32.89 cents per car-mile. Under the rate of 85 cents the earnings would have been 7.18 mills per ton-mile and 24.85 cents per car-mile. A number of rate comparisons are made in support of the allegation of unreasonableness.

Defendants contend that the rate on copra was reduced to encourage the importation of copra for the manufacture of vegetable oils, and do not admit that the prior rate was unreasonable.

In *Procter & Gamble Co. v. Director General*, 57 I. C. C., 465, we found that the rate of \$1.125, minimum 40,000 pounds, on copra from Seattle, Wash., and San Francisco and Oakland, Calif., to Ivorydale, Ohio, Port Ivory, N. Y., and Dallas and Houston, Tex., was unreasonable to the extent that it exceeded 85 cents, and awarded reparation.

We find that the rate here assailed was unreasonable to the extent that it exceeded the subsequently established rate of 85 cents; that the Planters Cotton Oil Company made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

We are without power to order refund of war taxes.

60 I. C. C.

No. 11863.

LOUISIANA RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND CHARGES OF THE MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY AND OTHER CARRIERS IN THE STATE OF LOUISIANA.

Submitted February 4, 1921. Decided February 15, 1921.

Certain fares, charges, and rates required by state authority to be maintained by the respondent steam railroads within the state of Louisiana found to be lower than the corresponding interstate fares, charges, and rates authorized in Ex Parte 74, *Increased Rates*, 1920, 58 I. C. C., 220, and to be unduly preferential of intrastate passengers and shippers, unduly prejudicial to interstate passengers and shippers, and unjustly discriminatory against interstate commerce.

W. M. Barrow and *Shelby Taylor* for Railroad Commission of Louisiana.

W. M. Barrow for American Cane Growers' Association and Godchaux Sugars, Incorporated.

F. H. Wood, *Victor Leovy*, *J. R. Bell*, and *Charles S. Fay* for Southern Pacific lines and lines in western group; *M. L. Costley*, *W. H. Brill*, *R. V. Fletcher*, and *H. C. Leake* for Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, New Orleans Great Northern Railroad Company, New Orleans & Northeastern Railroad Company, Louisville & Nashville Railroad Company, Louisiana Railway & Navigation Company, and all lines in Louisiana east of the Mississippi River; *George Janvier* for Gulf Coast Lines; *C. Schoenfelder*, *L. M. Hoggsett*, and *Esmond Phelps* for Texas & Pacific Railway Company and receivers; *B. S. Atkinson* for Louisiana & Arkansas Railway Company; *E. C. D. Marshall* for Louisiana Railway & Navigation Company; and *G. B. Auburbin* for New Orleans Great Northern Railroad Company.

L. F. Daspit for Shreveport Chamber of Commerce; and *C. N. Nesom* for Alexandria Chamber of Commerce.

REPORT OF THE COMMISSION.

CLARK, Chairman:

The state of Louisiana lies partly within the western group and partly within the southern group, as defined by us in Ex Parte 74, *Increased Rates*, 1920, 58 I. C. C., 220. As shown by our report in 60 I. C. C.

that proceeding, we authorized all steam railroads subject to our jurisdiction serving the western group, within which is included that part of the state of Louisiana on and west of the Mississippi River, to increase their interstate freight rates 35 per cent, to increase by 20 per cent their interstate passenger fares and baggage charges and rates on milk and cream, and to establish a surcharge upon occupants of sleeping and parlor cars, amounting to 50 per cent of the charge for space in such cars, to accrue to the rail carriers. For application within that region which includes the portion of Louisiana bounded on the west by the Mississippi River we authorized the same percentage increases in interstate passenger fares, baggage charges, and rates on milk and cream, an increase of 25 per cent in the interstate freight rates, and the establishment of a surcharge corresponding to that authorized in the western and other groups. On August 26, 1920, increased interstate rates, fares, and charges responsive to our authorization were established by respondents. Applications for authority to similarly increase intrastate rates, fares, and charges for transportation within Louisiana were filed by respondents with the Railroad Commission of Louisiana, hereinafter called the Louisiana commission, and in the ensuing proceedings before that body, as in the instant proceeding before us, a complete transcript of the record in Ex Parte 74 was introduced in evidence. The Louisiana commission expressed the opinion "that the situation in the state of Louisiana is not different from that which prevails elsewhere in the United States" and, "after a most careful and searching investigation," it approved the applications for authority to increase intrastate freight rates and charges within Louisiana except as to certain commodities, the rates on which are in issue here. Applications for authority to increase passenger fares to the interstate basis and to establish a surcharge corresponding to that authorized by us were denied. The pertinent requirements of the Louisiana commission shown in its order No. 2354 of September 18, 1920, are reproduced in the margin.¹

Pursuant to petition filed by carriers operating within the state of Louisiana investigation with respect to the matters and things

¹ *Ordered*, That, effective October 1, 1920, the railroads operating within the State of Louisiana may increase their intrastate freight rates, except as hereinafter provided, in this state, the same percentages as were allowed by the Interstate Commerce Commission in its Order in Ex Parte 74, observing the percentages allowed in Western Territory and Southern Territory, respectively, in the State of Louisiana west of the Mississippi River and east of the Mississippi River. It is further,

Ordered, That the rates on sand, gravel, crushed stone, shells and other materials of a similar character, to be used in the construction of good roads, streets, or public work, as they may now apply, shall not be advanced or changed, until further ordered. It is further,

Ordered, That, considering the protests offered by representatives of the rice interests, that as to the rates on rough and clean rice within the State this case is held open for

alleged was instituted by us, and all steam railroads within Louisiana subject to our jurisdiction were made parties respondent. Notice of the investigation was given to the general public, duly served upon the Governor of Louisiana, upon the Louisiana commission, and upon all carriers respondent. The issues in this proceeding are presented for determination under provisions of the interstate commerce act referred to by us in former decisions, and those provisions will not be here restated. *Increased Rates, 1920, supra; Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290; *Intrastate Rates within Illinois*, 59 I. C. C., 350; *Wisconsin Passenger Fares*, 59 I. C. C., 391; *Arkansas Rates and Fares*, 59 I. C. C., 471; *Minnesota Fares and Charges*, 59 I. C. C., 502. Full hearing has been had, and views of the parties in interest have been presented to us on brief and by oral argument.

PASSENGER FARES.

Act No. 133 of the general assembly of the state of Louisiana, reproduced in the margin,¹ prescribes maximum passenger fares for transportation within Louisiana. The Louisiana constitution adopted in 1898 reposes in the Louisiana commission regulatory power over intrastate passenger fares, but it appears that the act referred to, which was approved July 11, 1894, has not been definitely repealed. On March 19, 1907, the maximum-fare provisions of the statute, in an amplified form, were made the subject of an order of the Louisiana commission, which includes a direction that "No rates for the transportation of passengers shall be changed or established without the consent of the commission."

the taking of further testimony with respect to said rates on rough and clean rice, and until such time as the hearings on this commodity have been completed, and further orders entered, the increases in rates on rice shall not be changed. It is further,

Ordered, That the rates on sugar cane and on milk and cream, within this State, shall be held open for the taking of further testimony with respect to the said rates, and until such time as the hearings on these rates have been completed and further orders rendered, the increases in rates on sugar cane and on milk and cream shall not be increased. It is further,

Ordered, That in so far as the carriers' applications affect and include passenger fares within the State of Louisiana they are denied. It is further,

Ordered, That this order and the advances permitted thereunder, is issued without prejudice to the filing of any complaint against specific rates, fares, or charges within the State of Louisiana, and this proceeding is kept open for the purpose of promptly considering adjustments of rates and all other appropriate matters which may properly come before us herein.

¹ ACT NO. 133 OF THE GENERAL ASSEMBLY OF THE STATE OF LOUISIANA OF 1894.

SECTION 1. *Be it enacted, etc.*, That from and after the promulgation of this act, it shall be unlawful for any railroad corporation doing business in this State, or any person or persons owning and operating a railroad under the laws of this State, and carrying persons for hire within this State, to charge more than three cents per mile for each mile they actually transport the passengers except as herein provided: *Provided*, That at all stations where tickets are on sale, that the passenger shall provide himself with a ticket, and that persons failing so to provide themselves, shall be charged not exceeding

Interstate passenger fares in the groups within which Louisiana is situated are, with certain exceptions herein noted, on a level 20 per cent higher than the prevailing level of intrastate fares. For interstate travel fares in the groups referred to are, with minor exceptions brought about by competitive influences, based on a rate of 3.6 cents per mile, while the intrastate fares in Louisiana for lines not less than 40 miles in length, are, and for a number of years have been, based generally upon 3 cents per mile, the maximum fare fixed by statute and by order of the Louisiana commission. That portion of general order No. 28 of the Director General of Railroads directing the establishment of fares on a basis of 3 cents per mile for passenger travel throughout the country resulted in no change in the Louisiana intrastate fares except as to charges for certain mileage books theretofore offered for sale at lower rates. On March 15, 1919, arbitrary charges for transportation by bridge or ferry across the Mississippi and other rivers were established under authority of the Director General. It is shown that the addition of those charges to the fares for intrastate travel between points east and west of the rivers results in a basis of more than 3 cents per mile considering actual distance traveled, but similar charges are exacted of the interstate traveler as a part of the fare or otherwise, and addition thereof as a comparative factor results merely in the exposition from a different viewpoint of the elements of discrimination and prejudice portrayed by the evidence in this proceeding. The expense of river crossing in Louisiana and elsewhere has been recognized by us as well as by the Director General. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105.

The depressing effect upon respondents' revenues of intrastate passenger fares lower than those contemporaneously applicable to interstate travel for similar distances and the discriminations thereby created are well illustrated in this case, as in previous cases above

four cents per mile, except from flag stations, or stopping places, where tickets are not offered for sale, in which case but three cents per mile shall be charged: *Provided*, That children under twelve years of age shall be charged not more than one-half the maximum rate above set forth: *Provided, also*, That no charge less than ten cents shall be made for a distance of three miles or less: *And, provided further*, That no charge of more than twenty-five cents shall be made by local or branch lines, under three miles in length, for carrying a passenger over such entire line, and that no charge of more than six cents per mile shall be made by local or branch lines of more than three and less than seventeen miles in length, and that no charge of more than five cents per mile shall be made by any such road of more than seventeen and less than forty miles in length: *Provided*, That when a passenger fails to provide himself with a ticket over such a line a charge of not more than six cents per mile may be made.

SEC. 2. *Be it further enacted, etc.*, That in order to prevent a violation of this act, the corporation, person, persons or agent, so wilfully offending shall forfeit and pay for each and every offense, the sum of one hundred dollars, (\$100.00), to be recovered before any court of competent jurisdiction; one-half of the said sum to be paid to the informant and one-half to the Charity Hospital of the City of New Orleans.

SEC. 3. *Be it further enacted, etc.*, That the provisions of this act shall not apply to narrow-gauge railroads under forty miles in length.

referred to, by submitted comparisons of through interstate fares with combinations embracing an intrastate fare. From representative points in Louisiana to destinations in Texas, Arkansas, Colorado, California, and Mississippi the through interstate fare may be defeated by amounts ranging from 67 cents to \$2.31 by reason of the divergent bases of fares. Fares from New Orleans to El Paso, Tex., are fairly typical. The interstate fare for that journey, \$42.56, may be defeated to the extent of \$2.30 by paying the intrastate fare of \$10.11 to Shreveport, La., and the interstate fare of \$30.15 thence to El Paso. Conductors and train auditors employed by respondents on the principal passenger trains operating to, from, and through Louisiana testified in considerable detail as to the growing practice of defeating the interstate fares by the use of intrastate fares between points in Louisiana on a link of an interstate journey. It is shown that since the effective date of the increased interstate fares there has been a noticeable increase in the proportion of passengers traveling intrastate, although passenger traffic as a whole has decreased to some extent.

Between certain principal points in Louisiana where interstate and intrastate routes are available the intrastate routes are given a substantial preference in fares. Of these the routes and fares between New Orleans and Monroe, La., are fairly typical. While the distance via the interstate route is only 10 miles greater than that via the intrastate route, the difference in fare is \$1.94 in favor of the intrastate route. Discrimination and undue prejudice against interstate points and against persons traveling in interstate commerce is also reflected in the fares to important jobbing points, of which Vicksburg, Miss., Natchez, Miss., and Shreveport, La., are fairly illustrative. The interstate fare from Calhoun, La., to Vicksburg, a distance of 90 miles, is \$3.70, whereas for a journey of 94 miles from Calhoun to Shreveport the intrastate fare is \$2.91. From Monroe to Natchez, a distance of 98 miles, the interstate fare is \$3.52, while the intrastate fare from Monroe to Shreveport, a distance of 97 miles, is \$2.91, a difference of 61 cents in favor of the intrastate traveler. Via the interstate route between New Orleans and Tallulah, La., a distance of 248 miles, the fare is \$9.39, whereas via the competing intrastate route traversing a distance of 264 miles the fare is \$1.51 less. Many illustrations similar to those referred to are shown of record.

For the period of six months ended June 30, 1920, passenger revenue derived from intrastate travel over the lines of the principal respondents amounted to \$3,644,079.96. On that basis it is estimated that the annual revenues from intrastate travel in Louisiana will closely approximate \$7,288,159.92 and that an increase of the intrastate fares to the level authorized by us for interstate application and

new in force would enhance the revenues of these respondents from intrastate travel to the extent of \$1,457,631.98. For the Louisiana Railway & Navigation Company, which is not embraced within the compilation referred to, it is shown that, based on the volume of intrastate travel for the first nine months of 1920 failure to increase its intrastate passenger fares to the level of the interstate fares will result in an annual loss to it of approximately \$100,000. About 96 per cent of the total passenger revenue of this line is derived from intrastate travel. The figures shown for the respondents referred to are based upon revenues derived from all intrastate travel, and the record indicates that there are no important fluctuations in the volume of passenger travel by which those figures might be substantially affected. It is conceded that an increase of 20 per cent has been imposed upon certain intrastate commutation fares and that there has been a slight falling off of the total volume of travel, but the figures produced are fairly supported by the record.

Respondents carry interstate and intrastate passengers on the same trains with the same service and accommodations. The record shows beyond question that there are no transportation conditions in the state of Louisiana that might justify fares on the whole lower than those applicable to interstate travel between points in Louisiana and points in other states. The evidence is convincing that in general, measured per passenger carried, it costs more to handle the intrastate than the interstate traveler. The questions here presented relating to passenger fares are similar in all respects to those presented in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*; *Intrastate Rates within Illinois*; *Wisconsin Passenger Fares*; *Arkansas Rates and Fares*; and *Minnesota Fares and Charges*; *supra*.

Counsel for the Louisiana commission shows that a considerable number of passenger trains operating in Louisiana do not run beyond the borders of the state, and it is also shown that on certain branch lines the business is mainly intrastate. But the record clearly discloses that respondents are engaged in both interstate and intrastate passenger transportation; that fares for such interstate transportation have been regularly filed with us and are now in use; and that railroads outside of the state can and do ticket passengers to points on respondents' lines within the state, and vice versa. The situation in Louisiana with respect to the operation of certain trains only on particular branch lines or on short stretches of line wholly within the state is not peculiar and does not differ from that prevailing in other states.

What has been said with respect to passenger fares applies in like manner to the surcharge upon passengers in sleeping and parlor

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cars. For similar distances between Lake Charles, La., and Nava-sota, Tex., on the one hand, and New Orleans and Lake Charles on the other, the intrastate traveler is required to pay only \$2 for sleeping-car accommodations the same as those for which the inter-state traveler is obliged to pay \$3.75. The interstate charge of \$3.35 for sleeping-car accommodations between New Orleans and Jackson, Miss., is similarly compared with an intrastate charge of \$2 for similar accommodations for a like distance between New Orleans and Shreveport. Many similar examples are shown of record.

From a revenue standpoint it appears that the situation in Louisiana is somewhat different from that existing at the time our investigation was instituted. Counsel for the Louisiana commission points out that certain increases in rates for freight transportation on commodities moving in considerable volume within the territory under consideration have been recently authorized by us in No. 8845, *Natchez Chamber of Commerce v. L. & A. Ry. Co., supra*, and it is asserted that intrastate rates on certain commodities have been substantially increased since August 26. It is conceded that the increases authorized in the case referred to will not augment the revenues of respondents in the southern group, which includes lines operating in Louisiana east of the Mississippi River.

Our decision in Ex Parte 74 and the record in that proceeding were before us at the time of our decision in the so-called *Natchez Case*, in which we said, among other things:

It should be understood that the basis herein prescribed refers to rates in effect at the time of the hearing, and the increase in rates which has been authorized should be applied to rates so made in the same manner as if they were in effect.

The *Natchez Case* has been reopened for the taking of further evidence with respect to certain commodities and, as indicated in our report therein, certain readjustments may become necessary. In any event, the decision was made in the light of our previous authorization in Ex Parte 74 and with full knowledge as to the probable effect thereof.

The evidence with respect to the relationship of interstate and intrastate commutation or other multiple forms of tickets and extra fares on limited trains is very meager, and no evidence appears of record concerning the relationship of interstate and intrastate excursion, convention, and other fares for special occasions, or club-car charges. Our findings and order with respect to passenger fares will relate only to the standard interstate local and interline fares, and to similar intrastate fares now maintained on a basis lower than the interstate basis authorized by us in Ex Parte 74.

Upon the record herein, and following *Rates, Fares, and Charges of N. Y. C. R. R. Co.; Intrastate Rates within Illinois; Wisconsin Passenger Fares; Arkansas Rates and Fares; and Minnesota Fares and Charges; supra*, we are of opinion and find that the increases in standard passenger fares made by the respondent steam railroads under Ex Parte 74, and now in effect, within the groups considered in this proceeding result in reasonable passenger fares for interstate transportation within the said groups, and that the failure of respondents to increase correspondingly the lower basis of standard intrastate fares and charges within the state of Louisiana over lines of said respondents 40 miles or more in length has resulted and will result in intrastate fares and charges for said transportation lower than the corresponding interstate fares and charges; in undue preference of and advantage to persons traveling intrastate in Louisiana; in undue prejudice to persons traveling in interstate commerce within the state of Louisiana and between points in the state of Louisiana and points in other states; and in unjust discrimination against interstate commerce.

We further find that said undue preference and prejudice and unjust discrimination can and should be removed by making increases in said intrastate passenger fares which shall correspond with the increases heretofore made by respondents, and now in effect, as aforesaid in interstate passenger fares.

We further find that the surcharges made by said respondents under Ex Parte 74 result in reasonable charges upon passengers so traveling in interstate commerce in the groups considered in this proceeding, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Louisiana over the lines of said respondents 40 miles or more in length has resulted and will result in intrastate charges lower than the corresponding interstate charges; in undue preference of and advantage to persons traveling intrastate within Louisiana; in undue prejudice to persons so traveling in interstate commerce within the state of Louisiana and between points in the state of Louisiana and points in other states; and in unjust discrimination against interstate commerce.

We further find that said undue preference and prejudice and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond to the surcharges heretofore made, and now in effect, as aforesaid upon passengers so traveling in interstate commerce.

We further find that whether the aforesaid passenger fares and surcharge upon occupants of sleeping and parlor cars pertain to transportation in interstate commerce or to transportation in intra-

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state commerce, the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

SUGAR CANE.

Prior to 1889 the cane plantations of Louisiana were equipped with individual mills or sugar houses for the crushing or grinding of sugar cane and conversion of the juice into sugar and molasses. The percentage of extraction was low and the sugar thus produced was of poor quality. A segregation of the manufacturing from the agricultural branch of the industry was undertaken during 1889 and the first central factory was erected at Franklin, La., in the parish of St. Mary.

Rates for the transportation of sugar cane that were considered by the carriers to be low were established prior to 1900 to aid in the development of the sugar business within the state. Witness for the sugar interests testified that "it was understood that there was not much money to the railroads in moving the cane." The rates then established do not appear of record, but it is shown that the establishment of reduced rates was ordered by the Louisiana commission in 1900. The resultant rates are still in effect, except that they were increased 25 per cent under general order No. 28 of the Director General of Railroads. By order of August 6, 1906, the Louisiana commission directed a reduction of 10 cents per ton in the rates then in force. The validity of the order was challenged by certain of the cane-carrying lines and proceedings were taken to the supreme court of the state. The court said, among other things:

We think it is fairly apparent * * * that the rates here attacked do not meet the requirements of the law in that they are uncalled for, unreasonable, and unjust, for as much as the revenue to be produced by them would be barely sufficient, if sufficient at all, to pay the actual cost of moving the commodity to which they apply, and would leave nothing, or next to nothing, wherewith to compensate plaintiffs for the use of their property or for the payment of their debts, and for betterments, or dividends; nor do we find that the lack of revenue from the rates on the raw material would be made up by those on the products.

The nature of the commodity and the conditions under which sugar cane must be handled are such that the unit cost of transportation is considerably in excess of the corresponding costs incurred in the transportation of many other commodities. The cane is subject to deterioration by souring of the sap or juice. Locomotives, cars, and crews must be assembled and assigned to the traffic during an annual season of slightly more than two months, as the cane must be moved promptly and the factories must have a steady and sufficient supply. Foreign-owned cars as well as cars owned by the cane-carrying lines are drafted into service. It is customary for the

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Southern Pacific, one of the principal lines, to set aside for the cane traffic 5 locomotives and an average of approximately 1,000 cars and to have five train crews working in this service constantly throughout the season. Cars are drawn from every direction, occasionally being hauled from points as far west as California and assembled at considerable expense. During the cane season the cars used in the traffic are in substantial part away from the home lines, and, where avoidable, repairs are not made until the season is over. The rate of depreciation during the cane season is thus considerably accelerated. The average haul of sugar cane is about one-third the length of the usual local movement, and every haul requires a return empty movement.

The Southern Pacific, the Yazoo & Mississippi Valley, and the Texas & Pacific present evidence showing that the cost of rendering this service exceeds the compensation received therefor.

The total revenues of respondents from the cane traffic are not definitely shown, but it appears that for five of the principal cane-carrying lines operating east and west of the Mississippi River, increasing the intrastate rates on sugar cane to the extent permitted by us as to all commodities moving in interstate commerce under Ex Parte 74, would produce additional revenue of approximately \$144,000 annually.

Counsel for the Louisiana commission objected to the admission of evidence with respect to the reasonableness of rates on sugar cane on the ground that no sugar cane is moved in interstate commerce between points in Louisiana on the one hand and points in any other state on the other hand, "and that, therefore, there can be no unjust discrimination against this particular traffic as between the rates applicable within the state and any other rates." Counsel for respondents, however, contend that there is unjust discrimination against interstate commerce by reason of the low basis of rates applicable on sugar cane. It is admitted that there is no discrimination as between intrastate shippers of sugar cane and interstate shippers of the same commodity. There is here no interstate commerce in sugar cane, but it seems manifestly unjust that interstate commerce and interstate shippers should be required to forego the use of needed equipment in order that this particular traffic may be accorded a preference, and that interstate commerce and interstate shippers should be penalized through the medium of necessarily higher interstate rates in order to meet the deficiency in revenue, amply portrayed upon this record, growing out of the preferred treatment of this particular kind of intrastate traffic and this special class of intrastate shippers. We can not assume that the Louisiana commission would attempt to require respondents to haul sugar cane under

rates that are shown to be less than the cost of service.) Under section 13 of the interstate commerce act we are authorized to avail ourselves of the cooperation of the state authorities and, inasmuch as the next season of harvest and transportation will not begin for several months, we shall defer for later consideration the issue with respect to rates on sugar cane.

SAND AND GRAVEL.

On August 26, 1920, interstate rates on road-building materials, including sand and gravel, were increased 35 per cent in the western group and 25 per cent in the southern group, pursuant to our decision in Ex Parte 74. Intrastate rates on sand and gravel were, with few exceptions, similarly increased throughout the western and southern group. For intrastate transportation of sand and gravel within Louisiana increases corresponding to those authorized by us in Ex Parte 74 for application to interstate traffic were permitted, but it was ordered by the Louisiana commission that rates on sand, gravel, and other materials, "to be used in the construction of good roads, streets, or public work * * * shall not be advanced or changed until further order." Rates so excepted will be hereinafter referred to as municipal rates. There is no intrastate movement in Louisiana under the municipal rates referred to of any commodities other than sand and gravel.

During the spring of 1916 at a conference between interested carriers, shippers, and a representative of the Louisiana commission an understanding was reached that a scale of rates the same as those now effective, except that the present scale reflects an increase of 1 cent per 100 pounds under general order No. 28 of the Director General, would be applied when the commodities were used in the construction of parish and state public roads, and when the parish or state obtained the benefit of the rates. The scale referred to was materially lower than that prescribed by the Louisiana commission and contemporaneously applied upon commercial shipments. The rates so established continued in force until canceled by direction of the Director General, and upon return of the carriers to their owners on March 1, 1920, the scale of rates applicable to commercial sand and gravel became effective upon municipal shipments and remained in force until some time in May or June, when the scale of municipal rates in force prior to federal control was reestablished under order of the Louisiana commission. It is asserted by witness for certain respondents that no opportunity for hearing with respect to these rates was afforded prior to entry of the order referred to, and that if such opportunity had been afforded consideration would have been

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given to conditions existing at the time rather than to conditions prevailing four years ago.

It is shown for the Louisiana commission, and conceded by witness for certain respondents, that municipal rates now in force were the subject of agreement between it and the carriers and that no application for rehearing or for further hearing with respect to those rates was ever made to the Louisiana commission. It is suggested in behalf of that commission that the issue here raised with respect to municipal rates is also included in No. 8845, *Natchez Chamber of Commerce v. L. & A. Ry. Co. supra*, which has been reopened, and that it should be disposed of on the more comprehensive record in that proceeding.

It is shown on argument that respondents Illinois Central Railroad Company, Yazoo & Mississippi Valley Railroad Company, and participating carriers have filed with us, to become effective February 20, 1921, schedules of interstate rates for the transportation to Louisiana points of municipal sand and gravel that are lower than the interstate rates on commercial shipments of sand and gravel from and to the same points, although it appears that they are on a level somewhat higher than the prevailing level of intrastate municipal rates on sand and gravel for similar distances.

The Louisiana commission has held open proceedings before it with respect to the matters referred to in its order No. 2354 of September 18, 1920, "for the purpose of promptly considering adjustments of rates and all other appropriate matters" that may come before it therein and that forum is still open to respondents. We have been authorized by Congress to avail ourselves of the cooperation, services, records, and facilities of the state in the enforcement of any provisions of the act, and in view of all the facts of record and of respondents' voluntary reduction of interstate municipal rates, we shall reserve for later determination the questions relating to rates on sand and gravel.

MILK AND CREAM.

During the last decade the dairy business of Louisiana has developed into an important industry. Along the lines of various of the respondents are many farms that produce milk and cream which are shipped in passenger trains to points adjacent to the corporation limits of the city of New Orleans, hereinafter referred to, for convenience of statement, as in New Orleans, to which the New Orleans rates apply. Across the state line the dairy farms of Mississippi have been developed, and the production of milk and cream within that state has greatly increased. During the year ended April 30,

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1916, shipments of milk from points in Mississippi on the line of the Illinois Central were in excess of 200,000 gallons. It does not appear that there is any substantial movement of cream via the lines of respondents. The interstate movement of milk is confined to the New Orleans market.

By orders of the Louisiana commission entered in 1910 and 1911 respondents were required to establish for the transportation of milk on passenger trains between points in Louisiana rates of 1.5 cents per gallon for distances of 80 miles or less, and 2 cents per gallon for distances of more than 80 miles, the rates to include returning the empty cans. These rates remained in force until they were increased 25 per cent under general order No. 28 of the Director General. Subsequently to the establishment of rates under orders of the Louisiana commission referred to complaint was filed with us, alleging, among other things, that rates exacted by the Yazoo & Mississippi Valley Railroad Company for the carriage of milk on passenger trains from points in Mississippi to New Orleans were excessive and unreasonable. The complaint was based in part upon the lower basis of rates afforded Louisiana intrastate shippers. We found that the interstate rates were unreasonable and prescribed a scale of reasonable maximum rates. *Dixie Dairymen's Asso. v. Y. & M. V. R. R. Co.*, 27 I. C. C., 618. A similar scale of rates was prescribed for application from points on the Illinois Central in Mississippi to New Orleans in *South Mississippi Dairymen's Asso. v. I. C. R. R. Co.*, 44 I. C. C., 297. While the interstate rates so prescribed were somewhat in excess of the intrastate rates for similar distances, the new scale enabled the interstate shippers to more advantageously reach the New Orleans market without change of the intrastate scale. The industry in Mississippi and Louisiana had adjusted itself to the relationship of rates existing prior to our decision in Ex Parte 74, which has been destroyed by an increase in the interstate scales without a corresponding increase in the intrastate rates. As illustrative of the substantial disparity so created it is shown that intrastate shippers at a large number of points in Louisiana may have their milk transported to New Orleans over distances of from 89 to 134 miles at a rate of 12.5 cents per 5-gallon can, while the interstate shipper at Centerville, Miss., for example, is required to pay 35 cents for similar transportation to New Orleans over a distance of 137 miles. The corresponding figures for 8-gallon cans are 20 cents and 45 cents, and for 10-gallon cans 25 cents and 50 cents, respectively. These intrastate and interstate rates are applicable over the lines of the same respondents, and many other illustrations appear of record in which interstate shippers of milk suffer great disadvantage in the marketing of their product under identical conditions of transportation, interstate and

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intrastate shipments being transported over the same rails and frequently in the same car.

Computed on the basis of the milk traffic for the year ended September 30, 1920, refusal of the Louisiana commission to grant an increase in the intrastate rates on milk to New Orleans corresponding to that permitted by us in Ex Parte 74 will result, if the same quantity of milk should move during the year beginning August 26, 1920, as moved during the year ended September 30, 1920, in intrastate revenue about \$10,321 less than would accrue from intrastate rates increased to the extent of 20 per cent.

It is clearly shown that interstate and intrastate transportation of milk to New Orleans from the points referred to is conducted under identical conditions of transportation, and that persons and localities in Mississippi engaged in the production of milk which is shipped to the New Orleans market are in direct competition with persons and localities engaged in similar production and shipment within the state of Louisiana.

We are of opinion and find that the increases made by the respondent steam railroads under Ex Parte 74, relating to rates on milk and now in effect, result in reasonable rates on milk for interstate transportation within the groups considered in this proceeding, and that the failure of the carriers within the state of Louisiana to correspondingly increase intrastate rates on milk to New Orleans and to maintain that basis, has resulted in the past and will result in intrastate rates to New Orleans and points taking the same rates lower than the corresponding interstate rates, in undue preference and advantage to shippers of milk to New Orleans and points taking the same rates in intrastate commerce, in undue prejudice to shippers of milk to New Orleans and points taking the same rates in interstate commerce, and in unjust discrimination against interstate commerce.

We further find that said undue preference and prejudice and unjust discrimination can and should be removed by making increases in intrastate rates on milk to New Orleans and points taking the same rates which shall correspond with the increases heretofore made, and now in effect, as aforesaid in the rates on milk shipped to New Orleans and points taking the same rates in interstate commerce.

We further find that whether the aforesaid rates on milk to New Orleans and points taking the same rates pertain to transportation in interstate commerce or to transportation in intrastate commerce the transportation services in each instance are performed by the carriers under substantially similar circumstances and conditions.

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RICE.

Rice is grown in various parts of the United States, and large areas are devoted to its cultivation in the states of Louisiana, Texas, and Arkansas. It is not ready for market until it has undergone cleaning or milling, and mills for the purpose of so treating the rough material are located at Crowley, Rayne, Lake Charles, and other so-called interior milling points in Louisiana and at New Orleans, which is a large and important rice market. Producers in Texas and Arkansas are in keen competition with Louisiana producers for the New Orleans market, and there is also considerable movement from Louisiana to Texas. During the period from August 1, 1919, to July 31, 1920, inclusive, 427 carloads of rice, aggregating 27,981,842 pounds, were transported from points in Louisiana to points in Texas via the lines of four of the principal respondents. From Arkansas to points in Louisiana the movement for the same period was 105 carloads, aggregating 6,137,815 pounds. Rough rice moves from points in Louisiana to various other points within the state in competition with rough rice moving from Arkansas and Texas to points in Louisiana, and there is a considerable movement of clean rice from Texas and Arkansas to Louisiana.

On August 26, 1920, interstate rates on rough and clean rice were increased by the percentages authorized by us in Ex parte 74, and corresponding increases have been authorized and established in other important rice-producing states, except that in Texas the increase authorized was slightly less than that permitted by us on interstate shipments. The Louisiana commission, however, declined to grant any increase until after investigation by it. On November 18, 1920, that commission prescribed for intrastate transportation of rough and clean rice in Louisiana maximum scales of rates to which the carriers were authorized by the same order to apply an increase of 35 per cent. It was directed that the rates so prescribed and increased should become effective December 15, 1920, "when all conflicting rates, rules, regulations and practices will be canceled."

The order of the Louisiana commission requires a general readjustment of the rates on rough and clean rice by virtue of which the intrastate rates in force at the date of our decision in Ex Parte 74 have been increased by amounts ranging from 2 per cent to 35 per cent on rough rice, the average being approximately 17 per cent, and from 18 per cent to 42 per cent on clean rice, the average authorized increase being 26 per cent. The greater percentages of increase in the intrastate rates on rough rice are for distances up to 90 miles, the amounts of authorized increase varying from 13 per cent to 35 per cent for those distances, while on clean rice the greater percentages

of increase are authorized for hauls of 60 miles and less, and for hauls of 105 miles or more. It is asserted that practically all the rough rice that moves into New Orleans is hauled over distances of more than 125 miles for which distances the authorized increase over the intrastate rates in force at the date of our decision in *Ex Parte 74* is 7 per cent.

The spread between rates on rough rice and those on clean rice in Louisiana has been a subject of contention for a number of years, mills in close proximity to the producing territory contending for a low basis of rates on rough rice for short distances and a low basis on clean rice to New Orleans, so that they might thereby be enabled to draw a maximum quantity of the rough material from contiguous points and market the finished product at New Orleans. The New Orleans mills, on the other hand, have for similar reasons contended for low rates on rough rice for the longer hauls and relatively higher rates on clean rice from the so-called interior milling points to New Orleans. Complaints directed against the various relationships that have existed have been before the Louisiana commission from time to time since 1899. As a result of these complaints the spread between the rates on rough and clean rice has been changed from time to time, and the recent order of the Louisiana commission reflects the last effort with a view to the establishment of a just and equitable relationship of intrastate rates on these commodities. It is asserted for respondents that the net result to the carriers in each instance has been a reduction in rates.

Rates for intrastate transportation of rice between points in the neighboring states of Texas and Arkansas are, with few exceptions, on a basis somewhat higher than are the rates for similar transportation within Louisiana. It also appears that application of the rates ordered established by the Louisiana commission, and now in force, will in certain instances result in disadvantage to the interstate shipper.

For the principal rice-carrying lines of Louisiana it is asserted that the adjustment prescribed by the Louisiana commission and its failure to authorize increases in intrastate rates existing on the date of our decision in *Ex Parte 74* corresponding to those permitted by us in that proceeding with respect to interstate rates will result in a substantial loss to them. The amount of difference between the revenues accruing under the order of the Louisiana commission and the revenues that might accrue under percentage increases corresponding to those authorized by us in *Ex Parte 74* is admittedly problematical, and for this and other reasons respondents ask that the issue with respect to rates on rice be withdrawn. This request is assented to by the Louisiana commission and by representatives of the rice shippers. The issue is withdrawn.

Certain evidence was offered over objection of counsel for the Louisiana commission with respect to rates on rice bran, rice flour, and other rice products, but inasmuch as rates on those commodities were not definitely brought into issue by our order of investigation in this proceeding, we shall not consider the rates applicable thereto.

COTTON.

Our order of investigation in this proceeding included intrastate rates on cotton. It appeared at the hearing, however, that the Louisiana commission has authorized increases in the rates on cotton corresponding to the increases permitted by us with respect to interstate rates in Ex Parte 74. It further appears that the intrastate rates so authorized have been established and are now in force. Therefore the issue with respect to rates on cotton was abandoned by respondents and no evidence with respect thereto was offered.

Our conclusions herein with respect to passenger fares, surcharges, and rates on milk to New Orleans are without prejudice to the right of the authorities of the state of Louisiana or of any other party in interest to apply for modifications of our findings and order as to any specific intrastate fare, rate, or charge on the ground that it is not related to the interstate fares, rates, or charges in such a way as to contravene the provisions of the interstate commerce act. Tariffs may be made effective on not less than five days' notice.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissenting:

In *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, 59 I. C. C., 290, the first of the series of cases involving intrastate rates which followed the failure of certain states to permit increases in rates and fares corresponding to those authorized by us in Ex Parte 74, I was unable to concur in the conclusions of the majority for reasons stated in a separate opinion. In the analogous cases which have since been decided I have dissented for similar reasons, but without further elaboration of views. This case, however, illustrates in so clear-cut a way one of the grounds of dissent that it warrants further comment.

It appears that sugar cane moves intrastate in Louisiana, but that there is no corresponding interstate movement. The rates on sugar cane have been increased since 1900 only by the 25 per cent under general order No. 28. Respondents presented evidence showing that these rates are now below the cost of rendering the service, and claim that this proves "unjust discrimination against interstate commerce," within the meaning of section 13 of the interstate commerce act. This claim is in entire harmony with the contention consistently made by the carriers in all these state cases, that intra-

state rates cause such discrimination when they are so low that they fail to contribute their fair share of railway operating income, and thus create a deficiency which must be made up elsewhere. It is their contention, in short, that the words "discrimination against" are equivalent, as they are used in section 13, to the words "burden upon."

The majority reserve these sugar-cane rates for possible future consideration, and under the circumstances I do not criticize this disposition of the matter. Nevertheless they remain a striking illustration of the difficulties which are encountered in construing section 13, not the less striking because in this case the issue is deferred.

Manifestly, if the carriers are correct in their contention, the fact that there is no interstate traffic in sugar cane is wholly immaterial, for the "burden" created by the deficiency in revenues is necessarily one which falls upon interstate commerce generally and not upon any particular class of interstate commerce. It also follows, inevitably, if they are correct, that we are the final arbiters of the reasonableness of all intrastate rates, thus acquiring through section 13 a jurisdiction from which we are specifically excluded in the opening section of the act. So revolutionary is this doctrine that I have felt, whatever its intrinsic merits or demerits may be, that it could not properly be accepted unless the Congress has conferred, or attempted to confer, such authority upon us in plain and unmistakable terms; and as stated in my expression of dissent in *Rates, Fares, and Charges of N. Y. C. R. R. Co.*, *supra*, I have been unable to discover any clearly manifested purpose of this kind.

On the other hand, if the carriers are wrong in their contention with respect to these sugar-cane rates, it must be because intrastate rates unjustly discriminate against interstate commerce, within the meaning of section 13, only when an element of competition exists between the intrastate traffic in question and interstate traffic of the same kind and when, by reason of such relationship, the intrastate rates make it more difficult or burdensome to engage in interstate commerce. In other words, there must be some injurious effect upon interstate commerce more direct and tangible than the general and indefinite effect which may conceivably be caused by a deficiency in the revenues of the carriers, and which can ordinarily be transferred to the ultimate consumer.

I find no difficulty, in view of all the provisions of the act, in accepting this interpretation of the words "unjust discrimination against interstate commerce," but where does it lead? In this very case the majority find that the intrastate passenger fares unjustly discriminate against interstate commerce to the extent that they are lower than the interstate fares; but is there evidence that all of

these intrastate fares have an injurious effect upon interstate commerce which is direct and tangible and in accord with the above interpretation? Such evidence is offered in the case of the milk and cream rates east of the Mississippi, but there is no adequate proof of similar injury in the case of the passenger business. It is not convincingly shown that in all or in any great number of instances a relationship exists between the interstate and the intrastate traffic so that the difference in fares injures interstate commerce in a way which is dissociated from the possible effect of a deficiency in the revenues of the carriers. There is no evidence that interstate passengers or localities will be benefited in a direct and immediate way by an increase in many of these intrastate fares.

The situation is one, in brief, in which the conclusions of the majority can be supported in their entirety only by reliance upon the doctrine of general "burden upon" interstate commerce, a doctrine which, carried to its logical conclusion, gives us ultimate jurisdiction over the reasonableness of all intrastate rates. It has seemed to me that this is also true of all the analogous cases which have so far been decided. In *Intrastate Rates within Illinois*, 59 I. C. C., 350, 365, the doctrine was thus stated:

If, without good reason, the fares within a state are lower than those authorized for interstate application, intrastate passenger traffic will not contribute its just share to the passenger revenues of the carriers, and the carriers may not earn the statutory return without further increases in the transportation charges on other traffic, including interstate commerce, thus unjustly discriminating against such commerce.

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No. 10770.¹

AMERICAN TOBACCO COMPANY

v.

DIRECTOR GENERAL, AS AGENT, SOUTHERN PACIFIC
COMPANY, ET AL.

Submitted October 22, 1920. Decided February 3, 1921.

1. Rates on leaf or unmanufactured tobacco, in carloads, from San Francisco, Calif., to New York, N. Y., found not unreasonable or otherwise unlawful.
2. Rate on leaf or unmanufactured tobacco, in carloads, from Tacoma, Wash., and Vancouver, British Columbia, to New York, N. Y., found unreasonable. Reparation awarded.

*T. T. Harkrader and George C. Lucas for complainants.**John F. Finerty for defendants.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner and orally argued.

These complaints involve similar issues, were heard together, and will be disposed of in one report. Complainants are corporations which manufacture and deal in tobacco, with principal offices in New York, N. Y. By complaints seasonably filed they allege that the rates charged by defendants for the transportation of numerous carloads of leaf or unmanufactured tobacco originating in China and shipped from the ports of Vancouver, British Columbia, Tacoma, Wash., and San Francisco, Calif., to complainants at New York, during the period from July 1, 1918, to May 29, 1919, were unjust and unreasonable. They ask reparation. Rates are stated in amounts per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments, aggregating 2,880,438 pounds, moved over defendants' lines by various routes to New York, and charges were collected at the applicable rates as follows:

From San Francisco, all-rail, commodity-----	\$2. 315
From San Francisco, rail-and-water, commodity-----	2. 065
From Tacoma and Vancouver, fourth class-----	2. 315

¹ This report also embraces No. 10770 (Sub-No. 1), *P. Lorillard Company, Inc., v. Director General, as Agent, Southern Pacific Company, et al.*, and No. 10770 (Sub-No. 2), *P. H. Gorman Company, Inc., v. Director General, as Agent, Northern Pacific Railway Company et al.*

Prior to June 25, 1918, an import commodity rate of \$1.50 applied from the California and north Pacific coast terminals to New York on leaf tobacco, in carloads. A domestic commodity rate of \$1.85 contemporaneously applied from California terminals and the fourth-class rate from the north Pacific coast terminals. Effective on that date, as a result of general order No. 28 of the Director General of Railroads, all import and export rates were canceled and the respective domestic rates were increased. The rates which thereby became applicable on both import and domestic traffic were those shown above. Effective May 29, 1919, an import rate of \$1.875, the equivalent of the former import rate of \$1.50, increased by 25 per cent, was established from all Pacific coast terminals. Reparation is sought to this basis.

This Chinese tobacco loads about 21 tons per car, has a value of approximately 29 cents per pound at point of origin in China, and is but slightly susceptible to damage. It is used as a blend in the manufacture of smoking tobacco and cigarettes. Complainants' witness testified that the volume of imported tobacco via the Pacific coast terminals for the year 1918 was 4,462 tons, or 200 cars, as compared with the eastbound domestic movement for the same period of 197 tons, or 10 cars. The import movement, complainants stated on argument, is spasmodic.

Complainants contend that the Railroad Administration ordered all import and export rates canceled through misapprehension; that the Director General readily recognized the injustice done in thus increasing the rates from 50 to 100 per cent or more, and accordingly on July 1, 1918, six days after cancellation, restored many of the transcontinental import and export rates, including the export rate on leaf tobacco; and that the failure to restore the import rates on leaf tobacco until nine months later was due to delay of the tariff publishing agents and not to a well-defined policy. We may not assume that an increase of 25 per cent in relatively low import rates would have made them reasonable maximum rates. As stated in *General Chemical Co. v. Director General*, 57 I. C. C., 222, at 225:

In requiring that import rates should be canceled and domestic rates substituted therefor, General Order No. 28 did not provide a percental increase.

Complainants introduced an exhibit showing comparisons of ton-mile earnings on various commodities under import and domestic rates from Pacific coast ports to New York and export rates from New York to Pacific coast ports. These ton-mile earnings are lower than those under the all-rail rates assailed. Reference is also made to the ton-mile earnings of 11.5 and 11.8 mills under domestic rates from Chicago and St. Louis to New York, as compared with earnings I. C. C.

ings of 14.52 and 17.66 mills under the rates of \$2.315 and \$2.815 assailed.

Considerable stress was laid by complainants on the fact that the westbound export rate on leaf tobacco is \$1.40, and on cigarettes \$1.35, and they ask in their brief that we give consideration to prescribing a rate of \$1.40 for future import shipments of leaf tobacco from Pacific coast terminals to New York. The adjustment is obviously unnatural, as the rates on the manufactured commodity are lower than on the raw material. Complainants assume that the amount of service is the same westbound as eastbound. But this is not necessarily true; *Parlin & Orendorff Co. v. S. P. Co.*, 42 I. C. C., 29. Nor is cost of service the only element entering into the making of the rates.

Defendants concede that reparation should be made on the shipments from the north coast terminals to the basis of the rate of \$2.315 applicable from the California ports. In defense of the reasonableness of the \$2.315 rate they rely largely upon the testimony of complainants' witness that this rate was established to foster a new industry and would not be considered, under all the circumstances, higher than reasonable, and that the import tobacco rate was made to stimulate the movement through Pacific coast ports and was affected by water competition. Defendants construe this testimony as an admission that the rate of \$2.315 was not unreasonable as applied to complainants' shipments. The inference is unwarranted. The witness testified that the annual crop of tobacco in California does not exceed 10 cars; that the rate of \$2.315 was not unreasonable for a movement of this size, and that the import movement via Pacific coast ports for the year 1918 was 200 cars.

Defendants' witness testified that the westbound domestic rate on tobacco from New York to all Pacific coast terminals was maintained on the same basis as the eastbound, viz \$2.315, and that a much heavier tonnage moves westbound.

The short-line distance from San Francisco is 3,187 miles. The rate of \$2.315 yielded 14.528 mills per ton-mile. That of \$2.815 for the same distance from the north Pacific coast terminals yielded 17.665 mills per ton per mile. We are not convinced that the rate of \$2.315 yielded unreasonable earnings on these shipments, in view of the circumstances and the necessity which impelled the issuance of general order No. 28. For the same reason it must follow that the rail-and-water rate of \$2.065 was not unreasonable.

We find that the rates applicable on the shipments from San Francisco were not unreasonable or otherwise unlawful; that the rate applicable on the shipments from Tacoma and Vancouver was unreasonable to the extent that it exceeded \$2.315; that the respective

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complainants made the shipments as described, bore the transportation charges thereon, and have been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and complainants should comply with rule V of the Rules of Practice.

No. 11493.

UNIVERSAL PORTLAND CEMENT COMPANY
v.
 BESSEMER & LAKE ERIE RAILROAD COMPANY ET AL.

Submitted October 25, 1920. Decided February 3, 1921.

Rate on cement, in carloads, from Universal, Pa., to Benham, Ky., found unreasonable. One shipment found to have been misrouted. Reparation awarded.

John J. Heard for complainant.

W. E. Gillespie for Louisville & Nashville Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the examiner's proposed report.

Complainant, a corporation manufacturing cement at Universal, Pa., by complaint seasonably filed alleges that the rate of 56 cents charged by defendants for the transportation of four carloads of cement from Universal to Benham, Ky., in October and November, 1917, was unjust and unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously applicable to and from Maysville, Ky. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

The shipments were routed by the shipper "B. & L. E., N. Y. C. & St. L., C. C. C. & St. L., C. & O., Maysville, Ky., L. & N." Three of the carloads, shipped in November, 1917, and aggregating 230,280 pounds, moved as routed. The other, shipped October 26, 1917, and weighing 65,740 pounds, moved from Cincinnati, Ohio, to Benham over the Louisville & Nashville and was misrouted. The Chesapeake & Ohio did not participate in the movement of this shipment.

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Charges were collected in the sum of \$1,657.71 at the applicable joint sixth-class rate of 56 cents. The aggregate of the intermediate rates contemporaneously in effect over the route specified in the bill of lading was 19.9 cents, composed of commodity rates of 8.9 cents to Maysville and 11 cents beyond. The aggregate of intermediate rates over the route of the October shipment was 21.4 cents, composed of commodity rates of 8.9 cents to Cincinnati and 12.5 cents beyond. On April 15, 1918, a joint commodity rate of 19.9 cents was made effective over both routes.

The error in routing one shipment over the Louisville & Nashville from Cincinnati is chargeable to the Cleveland, Cincinnati, Chicago & St. Louis. Defendants admit that the joint rate was unreasonable to the extent that it exceeded the aggregates of the intermediate rates.

We find that the shipment made October 26, 1917, was misrouted by the Cleveland, Cincinnati, Chicago & St. Louis Railway; that the joint rate applicable over both routes was unreasonable to the extent that it exceeded the aggregate of intermediate rates contemporaneously in effect over the respective routes of movement; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount that the charges paid exceeded those charges which would have accrued on the basis of a rate of 19.9 cents per 100 pounds; and that it is entitled to reparation, with interest; from all defendants in the sum of \$831.31; from all defendants except the Chesapeake & Ohio in the sum of \$227.46; and from the Cleveland, Cincinnati, Chicago & St. Louis in the sum of \$9.86, representing the difference between the rate found reasonable over the route of movement via Cincinnati and that found reasonable over the route designated by the shipper. An appropriate order will be entered.

60 I. C. C.

No. 11166.

JAMES S. KIRK & COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
AND DIRECTOR GENERAL, AS AGENT.

Submitted October 21, 1920. Decided February 3, 1921.

Upon complaint bringing under consideration the defendant carrier's demurrage tariffs and practices in connection therewith and asking reparation on various shipments detained at Chicago, Ill., *Held*: That the charges collected were applicable and the practices complained of were not unreasonable or otherwise unlawful. Complaint dismissed.

W. M. Hopkins for complainant.

John F. Finerty, A. S. Brooks, and Robert H. Widdicombe for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued before us.

By complaint seasonably filed, complainant, a corporation manufacturing soaps and other commodities at Chicago, Ill., seeks reparation for alleged illegal, unreasonable, and unduly prejudicial demurrage charges collected by defendants for the detention at Chicago of various carloads of freight shipped interstate and intrastate to that point, between January 1, 1918, and October 1, 1919, and thus during federal control. An order for future relief as hereinafter set forth is also asked. At the hearing the allegation of undue prejudice was in substance abandoned.

The shipments were billed to complainant's State street plant in the Chicago switching district, located on industry tracks of the Chicago & North Western, hereinafter called defendant, to which point the Chicago rates applied. On the unloading tracks at this plant not more than two tank cars, six cars of coal, and four cars of miscellaneous freight can be spotted at one time. The number of shipments coming to complainant during this period was unusually large, but it did not attempt to have them held back at origin because, it is said, complainant was under contract to furnish various supplies to the government and transportation service was irregular.

By reason of the continued congestion at its plant so-called "embargoes" against its traffic were in effect on defendant's line during most of this period and, while other cars were declined, those subject thereto were held on tracks of defendant's connections. As to the latter, defendant was served with arrival notice by its connections and thereupon served complainant with notice of constructive placement and assessed demurrage under rule 5 of its demurrage tariff. In so doing the time consumed in the movement from the hold tracks to complainant's plant was originally included in the detention period but the charges were later reassessed to exclude that time and refund was made to complainant.

During the period in question rule 5 was modified in minor particulars but its requirements were substantially the same as set forth in defendant's tariff I. C. C. No. 7975, which provided:

SECTION A. When delivery of cars consigned or ordered to any other than public-delivery tracks or to industrial interchange tracks cannot be made on account of the act or neglect of the consignee, or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must send or give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks, or because of other conditions attributable to consignee. This will be considered constructive placement. See Rule 4 (Notification).

This will apply to such cars which consignees located on switching line are unable to receive, and which, for that reason, the switching line is unable to receive from the carrier line: the carrier line will advise the switching line of the point of shipment, car initials and number, contents and consignee and, if transferred in transit, the initials and number of the original car; the switching line will notify consignee and put such cars under constructive placement.

Complainant contends that the charges collected were without warrant in law (1) because assessed by defendant under its tariffs although the cars were held on the tracks of other carriers; (2) because the cars were held short of billed destination; (3) because no notice of the "embargoes" was given by defendant to shippers prior to acceptance of the freight for transportation. With respect to interstate shipments, we are asked to require defendants "to cease and desist from assessing, charging, and collecting demurrage charges in the future under the rule recited on cars constructively placed on foreign lines or on cars shipped after embargo notice has been issued to connecting lines, unless such connecting lines have notified shippers of such embargo notice prior to acceptance of shipments." The present rule is published in a joint tariff, concurred in by carriers generally, including defendant, established during the period of federal control and since continued in effect. This tariff provides:

NOTE.—Under this rule the time of movement between hold point and destination, and any other time for which the railroad is responsible will not be computed against the consignee.

SECTION A.—1. When delivery of a car consigned or ordered to an industrial interchange track or to other-than-a-public-delivery track cannot be made on account of the inability of the consignee to receive it, or because of any other condition attributable to the consignee, such car will be held at destination or, if it cannot reasonably be accommodated there, at the nearest available hold point, and written notice that the car is held and that this railroad is unable to deliver will be sent or given to the consignee. This will be considered constructive placement. (See Rule 3, Sections D and E.)

2. On a car to be delivered to a switching line for final delivery and which consignee located on switching line is unable to receive and which for that reason the switching line is unable to receive from this railroad, notice will be sent or given the switching line showing point of shipment, car initials and numbers, contents and consignee and if transferred in transit the initials and number of the original car.

3. When this railroad is the switching line and, under conditions set forth in Paragraph 1, is unable to receive cars from a connecting line at destination for delivery within switching limits, upon receipt of notice from connecting line it will notify the consignee and put such cars under constructive placement. (See Rule 4, Section C.)

Defendant's witnesses testify that, prior to the adoption of the uniform code, the demurrage rules of many of the lines authorized the line-haul carrier to notify the consignee and to assess demurrage where the switching line refused to receive cars because of the consignee's inability to accept delivery, and that the uniform code was amended in 1911 to include a somewhat similar rule. The rule then adopted created considerable friction as the various industries frequently claimed that these so-called "embargoes" were not caused by fault on their part. The line-haul carrier, being without information of conditions at the industries, could not successfully combat these claims. The industries also objected to the rule because it did not enable them to operate under the average agreement, the car being considered as held by the line-haul carrier for orders. It is testified that as a result of these conditions the rule herein assailed was adopted, and that it has been generally satisfactory to industries on defendant's line.

With respect to the so-called "embargoes" it is testified that defendant probably serves a greater number of industries in switching service in the Chicago district than any other carrier, approximately 350 being located on its line within the inner zone as defined in agent Lowrey's tariff, and 28,000 to 30,000 cars per month being handled to and from these industries. In order to avoid congestion which would seriously impair its service to these industries, a record is kept showing the track space capacity of each industry for inbound cars. Following daily inspection of the tracks of each industry the record is modified to indicate their then available capacity for additional cars, whereupon notices are sent by defendant

to its various connections either declining to accept further cars or removing or modifying restrictions then in effect.

Defendants contend that they would not be justified in refusing to accept freight offered for transportation because of restrictions of this character, which are due to and vary with conditions at individual industries; that such restrictions are in reality mere operating matters and are not "embargoes"; and that it is unnecessary, impracticable, and, indeed, impossible to keep shippers in all sections of the country advised of such restrictions because of their daily modification and the number of industries served.

Complainant urges that "in the absence of any notice of the existence of an embargo the initial carrier assumed the responsibility for any car detention that might occur, and thus the demurrage arose through a railroad error and not by reason of the disability of either the shipper or the consignee." In the light of the facts of record this contention is not tenable.

It is to be observed that complainant operates under the average agreement and does not ask for a restoration of the rule formerly applicable; that similar operating restrictions have been employed by defendant for years; and that defendant derives no pecuniary advantage therefrom or from the provision of the demurrage rule which, in effect, fixes the hold point during the consignee's disability as the rails of the line-haul carrier. The detention in question was caused primarily by the consignee's inability to receive the cars and not by any fault of the carrier. It does not appear that the cars were delivered to complainant in less numbers than it was able to receive or that the demurrage charges would have been less if the cars had been held on defendant's rails. From these and other facts of record it is clear that these charges may not be condemned because the cars were not held on defendant's tracks adjacent to complainant's plant; that the objection in so far as it grows out of the fact that the cars were held on the rails of carriers not concurring in defendant's tariff is entirely technical and does not pertain to the present tariff; and that no sufficient reasons are shown for condemning defendant's practices herein complained of.

We find that the demurrage charges assessed were duly authorized by defendant's tariffs, and that the practices assailed were not and are not unreasonable, unduly prejudicial, or otherwise unlawful.

The complaint will be dismissed.

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No. 11243.

CHARLES BOLDT GLASS COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 4966
OF CHESAPEAKE & OHIO RAILWAY COMPANY.*Submitted October 23, 1920. Decided February 4, 1921.*

1. Rates on glass bottles, in carloads, from Huntington, W. Va., to Midway and Frankfort, Ky., found unreasonable. Measure of reasonable maximum rates prescribed for the future and reparation awarded.
2. Fourth section relief denied.

T. J. McLaughlin for complainant.*J. S. Patterson* for Director General of Railroads and Chesapeake & Ohio Railway Company, defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation manufacturing glass bottles at Huntington, W. Va. By complaint filed February 7, 1920, it alleges that the rates assessed on glass bottles, in carloads, since March 1, 1918, from Huntington to Midway and Frankfort, Ky., were and are unreasonable, and violative of section 4 of the act to regulate commerce in that they exceeded and exceed the rates contemporaneously maintained on like traffic to Louisville, Ky. It asks reparation and reasonable rates for the future. Rates will be stated in cents per 100 pounds and will not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments consisted of empty glass bottles in crates or boxes, in carloads, and moved over the Lexington division of the Chesapeake & Ohio to Lexington, Ky., and the Louisville & Nashville to destinations, which are directly intermediate to Lexington and Louisville. The distances over this route are: To Lexington, 189

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miles; to Midway, 153 miles; to Frankfort, 168 miles; and to Louisville, 223 miles. From Lexington to Louisville the Chesapeake & Ohio operates over the Louisville & Nashville tracks under a track-age agreement by which it is prohibited from transporting freight to or from intermediate local points. The two lines have separate terminals in Louisville. During the period of federal control both lines were operated by the Director General of Railroads.

Charges were collected on the shipments made during the period from March 1 to December 12, 1918, at a rate of 20 cents, minimum 30,000 pounds, and on subsequent shipments at a rate of 29 cents. A joint commodity rate of 20 cents was applicable prior to June 25, 1918, on which date it was increased to 25 cents pursuant to general order No. 28 of the Director General of Railroads. On December 12, 1918, the latter rate was increased to 29 cents in accordance with permission granted in *The Fifteen Per Cent Case*, 45 I. C. C., 303. These rates applied over the Chesapeake & Ohio to Lexington, and the Louisville & Nashville beyond. The shipments which moved between June 25, 1918, and December 12, 1918, were undercharged. The Chesapeake & Ohio formerly published a local commodity rate from Huntington to Louisville of 13.7 cents which was increased May 2, 1918, to 16 cents and on June 25, 1918, to 20 cents.

To show unreasonableness of the 29-cent rate, complainant submits comparisons of rates from more distant points with earnings per ton-mile and per car-mile, including the following:

From—	To—	Dis- tances via Hunt- ington.	Rates.	Earnings.		
				Per car. ¹	Per ton- mile.	Per car- mile. ¹
		<i>Miles.</i>	<i>Cents.</i>		<i>Mills.</i>	<i>Cents.</i>
Beaver Falls, Pa.	Midway, Ky	451	29	\$37.00	12.8	19.3
Wellsville, Ohio	do.	443	29	37.00	13.1	19.6
Hammondsville, Ohio	do.	437	29	37.00	13.3	19.9
Sewickley, Pa.	do.	379	29	37.00	15.3	22.9
Charleston, W. Va.	do.	204	22.5	37.50	23	33
Huntington, W. Va.	do.	153	29	37.00	37.9	56.8
Charleston, W. Va.	Frankfort, Ky	218	22.5	37.50	20.6	30.9
Huntington, W. Va.	do.	168	29	37.00	34.5	51.8
Charleston, W. Va.	Louisville, Ky	273	22.5	37.50	16.5	24.7
Huntington, W. Va.	do.	223	29	60.00	17.9	26.9

¹ Minimum, 30,000 pounds.

From the above table it appears that the 29-cent rate applied for distances two to three times that from Huntington to Midway and that the ton-mile and car-mile earnings under the rates here considered are in some instances more than double the earnings under the rates between other points.

Glass bottles, in carloads, are rated fifth class in official and com-
ern classifications, and for defendants it is testified that they usu-

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move at fifth class in central territory. The 29-cent rate assailed exceeded the fifth-class rates to Louisville of 22 cents from Huntington and 23 cents from Charleston. All were exceeded by the fifth-class rates to Midway and Frankfort, which were the lowest combinations on Lexington and Louisville, respectively.

Defendants contend that relatively higher rates to Frankfort and Midway are justified by the difficult character of the country and sparsity of population on the Lexington division of the Chesapeake & Ohio as compared with other railroad lines in that territory, and that competition from north of the Ohio River forces the lower rates to Louisville. The rates assailed are shown to compare favorably with numerous rates on bottles for substantially the same distances to points in West Virginia and Virginia east of Huntington.

No fourth section application was set for hearing with this case, but at the hearing the Chesapeake & Ohio signified its willingness to let the record as made be considered in connection with those portions of its application No. 4966, by which it seeks to continue rates on glass bottles, carloads, from Huntington, W. Va., to Louisville, Ky., lower than the rates contemporaneously maintained on like traffic to Midway and Frankfort, Ky. It contends that there is no fourth section departure because, under the trackage agreement previously referred to, it must deliver to the Louisville & Nashville at Lexington all shipments destined to Midway and Frankfort, while shipments to Louisville are carried by its own power to destination. It also points out that the Louisville & Nashville does not participate in the rate of 20 cents from Huntington to Louisville.

This contention is without merit, as it is plain that the compensation received under the joint rate for the shorter distance to Midway was greater than that under the single-line rate for the longer distance to Louisville over the same route in the same direction, the shorter being included within the longer distance. Moreover, both roads were under federal control. In *Axon v. K. & M. Ry. Co.*, 37 I. C. C., 389, a similar contention was made. We there held that the maintenance of lower rates on bottles, in carloads, from Dunbar, W. Va., to Louisville than were contemporaneously maintained on like traffic from the same point of origin to Midway and other intermediate points were not justified, and denied fourth section relief. See also *Greenbaum Co. v. C. & O. Ry. Co.*, 25 I. C. C., 352, and *Greenbaum Co. v. L. & N. R. R. Co.*, 31 I. C. C., 699.

It was admitted by the Chesapeake & Ohio that there is a departure from the fourth section in the rates from Charleston to Frankfort and Midway, as these rates are 6.5 cents less than rates to the same points from Huntington, which is intermediate. It was testified that it was proposed to correct this situation by making

the fifth-class rates applicable from Huntington and Charleston to Louisville and maintaining no higher rates to Frankfort and Midway.

We find that the rates assailed were, are, and for the future will be, unreasonable to the extent that they exceeded, exceed, or may exceed the rates contemporaneously maintained on like traffic from Huntington to Louisville; that complainant made the shipments as described and paid and bore the charges thereon; and that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable. Complainant should comply with rule V of the Rules of Practice. The outstanding undercharges may be waived.

We further find that the Chesapeake & Ohio Railway Company has not justified the maintenance of a lower rate on glass bottles, in carloads, from Huntington to Louisville than is contemporaneously maintained by it on like traffic from the same point of origin to Midway and Frankfort, Ky., and fourth section relief will be denied.

Appropriate orders will be entered.

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No. 11376.

ROBINSON CLAY PRODUCT COMPANY
v.
DIRECTOR GENERAL, AS AGENT, WHEELING & LAKE
ERIE RAILROAD COMPANY, ET AL.

Submitted October 25, 1920. Decided February 4, 1921.

Rate on bituminous coal, in carloads, from Sugar Creek, Ohio, to Parral, Ohio, during federal control, found not unreasonable. Complaint dismissed.

Alvin Hill for complainant.

Andrew P. Martin for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing clay products at Parral, Ohio, by complaint filed April 7, 1920, alleges that the rate of \$1.10 charged on 29 carloads of bituminous coal shipped from Sugar Creek, Ohio, to Dover, Ohio, in February and April, 1918, was unreasonable to the extent that it exceeded the subsequently established rate of 80 cents. It asks reparation only. Rates are stated in amounts per net ton.

The shipments moved over the Wheeling & Lake Erie to Justus, Ohio, 16.1 miles, and the Baltimore & Ohio to Parral, 11 miles. Parral is a suburb of Dover and takes the same rates. Charges were collected at the applicable combination commodity rate of \$1.10, composed of rates of 55 cents to Justus and 55 cents beyond.

Prior to the movement complainant requested defendants to establish a joint rate of 80 cents from Sugar Creek to Parral. This was done on the assumption that there would be a regular movement, the rate becoming effective April 22, 1918. It was increased to \$1 on June 25, 1918, following general order No. 28 of the Director General of Railroads.

Defendants compare the rate assailed with contemporaneous intrastate rates on coal, ranging from \$1.45 for 12.9 miles to \$1.50 for 60 I. C. C.

29.6 miles, in effect over the Baltimore & Ohio. They also refer to relatively higher intrastate rates then applicable over the Pennsylvania.

Complainant admits that the primary source of its coal supply is the Pittsburgh district, that these were emergency shipments, and the only shipments from Sugar Creek to Parral or Dover.

We find that the rate assailed was not unreasonable. The complaint will be dismissed.

No. 11877.

UNITED STATES IMPORTING & EXPORTING COMPANY
v.
DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH
WESTERN RAILWAY COMPANY, ET AL.

Submitted October 19, 1920. Decided February 4, 1921.

Charges on fragments of band-iron baling ties, in carloads, from Milwaukee, Wis., and Chicago, Ill., to Portland and Oregon City, Oreg., respectively, found not unreasonable. Complaint dismissed.

Emuel J. Forman for complainant.

John F. Finerty, H. A. Scandrett, A. C. Spencer, and W. A. Robbins for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation engaged in the general export and import business and the handling of junk at Portland, Oreg., alleges that the charges collected for the transportation of two carloads of secondhand band-iron baling ties, one shipped from Milwaukee, Wis., to Portland, Oreg., the other from Chicago, Ill., to Oregon City, Oreg., during May and June, 1918, were unreasonable. Reparation only is asked. Rates will be stated in cents per 100 pounds.

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After the baling tie has been cut from the bale the pieces of band iron are usually disposed of to junk dealers as scrap iron. Complainant acquired the pieces composing these shipments for the purpose of making them over into secondhand baling ties by riveting the strips together in suitable lengths. The Milwaukee shipment cost complainant \$30 per ton and the Chicago shipment \$26. The price of new band iron at that time is said to have been \$175 to \$180 per ton.

The shipments weighed 50,800 pounds and 42,048 pounds, respectively, and were billed as scrap iron. When they reached destination it was discovered that they were to be used in lieu of new band-iron baling ties. The billing was changed and charges were collected on the basis of a commodity rate of 90 cents, minimum 80,000 pounds, applicable to iron or steel baling ties, band or wire, in bundles. A commodity rate of 60 cents, minimum 60,000 pounds, was applicable on scrap iron, and complainant contends that charges should have been assessed on that basis. The reasonableness of the rate on iron or steel baling ties as such is not in issue.

When the Milwaukee car was shipped the tariff naming the rate on scrap iron contained a note describing that commodity as follows:

Rates apply on Scraps or Pieces of Iron or Steel having value for remelting purposes only.

When the Chicago shipment moved the tariff description had been amended to read:

Scrap Iron or Steel having value for remelting purposes only, loose or in packages.

The commodity shipped does not come within these tariff descriptions because it had value for other than remelting purposes.

Complainant contends that it was scrap iron and would have been accorded the scrap-iron rate if it had not been put to a secondhand use; that most scrap iron has some secondhand value if a secondhand user can be found; and that distinction because of use with respect to these shipments would violate the principle that different rates may not be applied on the same commodity, depending upon the use to which it is to be put.

In *Weissbaum & Co. v. Director General*, 53 I. C. C., 681, the complainant's contention was that the secondhand boiler tubes shipped consisted of "scraps or pieces of iron or steel having value for remelting purposes only." In dismissing that complaint we said that these words defined the nature of the articles and that we were not persuaded that they made the rate dependent upon its use. In this case, also, the question before us is whether the shipments were of scrap iron. The applicable tariff provided that scrap iron was iron having value for a particular use only, namely, remelting. The pieces shipped had value and were intended to be used for purposes

other than remelting, namely, for riveting together into baling ties. The use to which the commodity was to be put is significant only as indicative of its nature. Clearly it was not scrap iron within the meaning of the tariff.

Complainant urges that some concession from the rate on new band-iron baling ties should be made when the shipments consist of secondhand material, but that question is not before us in this case.

The 90-cent rate on baling ties is applicable only on ties "in bundles." The content of these cars was shipped loose. In such case rule 16 of the tariff provided that the rate would be 25 per cent higher and if these shipments were properly billed as band-iron baling ties the applicable rate was 112.5 cents. But the same tariff carries a rate of 90 cents on "Band Iron," loose or in bundles, minimum 80,000 pounds. Since these ties had been cut they were no longer "ties," and could not be used again as ties until reworked, which was not done before shipment. The shipments consisted of material which was to be used for making ties and should have been shipped as "Band Iron," taking the band-iron rate of 90 cents, minimum 80,000 pounds, which is the same rate and minimum as that upon which the charges collected were based.

We find that the charges collected were not unreasonable. The complaint will be dismissed.

GO I. C. C.

No. 11537.
PITTSBURGH CRUCIBLE STEEL COMPANY
v.
DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted November 29, 1920. Decided February 4, 1921.

Rate on crude dolomite, in carloads, from Union Stone Company, Pa., to Midland, Pa., during federal control, found to have been unreasonable. Reparation awarded.

Allen H. Kerr for complainant.

Guernsey Orcutt for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing steel at Midland, Pa., alleges that the rate charged on 10 carloads of crude dolomite shipped between October 30, 1918, and November 7, 1918, inclusive, from Union Stone Company, Pa., to Midland, was unjust and unreasonable to the extent that it exceeded the subsequently established rate. We are asked to award reparation.

Union Stone Company is a nonagency station on the York Haven & Rowena branch of the Pennsylvania, shipments being billed from Shocks Mills, Pa., the junction with the main line, 3 miles distant and across the Susquehanna River. The shipments moved from Union Stone Company through Pittsburgh, Pa., over the lines of the Pennsylvania system to Midland, 301 miles, and charges of \$2 per net ton were collected. A commodity rate of \$2.40 per net ton was applicable and the shipments were undercharged.

Early in October, 1918, complainant made application for the establishment of a rate of \$1.90 per gross ton on dolomite from Union Stone Company to Midland. Effective November 16, 1918, that rate was published on one day's notice. The need for dolomite having become acute prior to the latter date, complainant ordered 10 carloads to be shipped, after being assured by defendants that the rate would, without doubt, be established.

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At the hearing complainant contrasted the \$2.40 rate from Union Stone Company to Midland with the rate of \$1.90 per gross ton, contemporaneously in effect from Union Stone Company to other points on the Pennsylvania in the same general territory. The lower rate was maintained to such representative points as Youngstown, Ohio, 330 miles; Sharon, Pa., 334 miles; and Follansbee, W. Va., 310 miles. Comparison was also made with the rate of \$1.90 in effect to Midland from Bainbridge, Pa., 295 miles, and Chickies, Pa., 302 miles. Bainbridge and Chickies are points on the Pennsylvania's main line 3 miles nearer and 4 miles farther distant, respectively, than Shocks Mills on traffic to Midland. Union Stone Company is not intermediate to Chickies, but the movements beyond the junction at Shocks Mills are the same from both points.

It was conceded by defendants' witness that the \$2.40 rate was a paper rate, constructed on the New York-Chicago commodity rate basis, and that no shipments had ever moved under it prior to the period in question. Some attempt was made by defendants to justify this rate on the ground that the shipments originated on a branch line. The shipments were described by defendants as sporadic, although subsequently there has been, and still is, a continuous movement of the commodity. Defendants also contrasted the \$2.40 rate with rates equally high to other points in the same general territory, but conceded on cross-examination that they do not move any traffic.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.90 per gross ton; that complainant made the shipments as described, paid and bore the charges thereon, and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation can not be determined upon this record and complainant should comply with rule V of the Rules of Practice. Collection of the undercharges may be waived.

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No. 11500.

EMPIRE COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND NASHVILLE,
CHATTANOOGA & ST. LOUIS RAILWAY.

Submitted November 23, 1920. Decided February 4, 1921.

Rate applicable on cotton seed in carloads from Somerville, Tenn., to Atlanta, Ga., found unreasonable. Reparation awarded.

Charles E. Cotterill for complainant.*Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in crushing cotton seed at Atlanta, Ga., alleges that the rates charged on five carloads of cotton seed shipped during July, October, and November, 1919, from Somerville, Tenn., to Atlanta were unjust and unreasonable. The prayer is for reparation only. Rates will be stated in cents per 100 pounds.

The shipments moved over the Nashville, Chattanooga & St. Louis, 483 miles. On four, aggregating 184,720 pounds, charges were collected in the sum of \$586.87 at the class-D rate of 81.5 cents, and on the remaining shipment, weighing 65,160 pounds, in the sum of \$188.96 at the class-N rate of 29 cents. The latter rate was applicable on all the shipments and there are, therefore, outstanding overcharges.

Contemporaneously there were distance commodity rates on cotton seed, in carloads, applicable over the route of movement for distances not exceeding 475 miles, the rate for the latter distance being 21.5 cents. Defendants conceded that the failure to establish commodity rates for distances over 475 miles was an error, and, effective January 20, 1920, extended the scale to 600 miles, the rate established for 483 miles being 22.5 cents.

We find that the rate applicable was unreasonable to the extent that it exceeded 22.5 cents per 100 pounds; that complainant made 60 I. C. C.

the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$213.59, with interest. An appropriate order will be entered.

No. 11400.

ATLANTIC REFINING COMPANY

v.

**DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.**

Submitted August 30, 1920. Decided February 4, 1921.

Rate applied on coal-tar naphtha in tank-car loads from Ontario street station to Point Breeze station in Philadelphia, Pa., during federal control, found unreasonable. Reparation awarded.

Harold B. Stone, E. H. Porter, Oscar H. Price, and John H. Stone
for complainant.

Edwin A. Lucas for Pennsylvania Railroad Company.

Alexander M. Bull for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Upon consideration of the record we reach a conclusion differing from that suggested by him.

Complainant, a corporation manufacturing petroleum products, alleges by complaint filed April 10, 1920, that the rate of 9 cents per 100 pounds charged on 44 tank-car loads of coal-tar naphtha shipped from Ontario street station to Point Breeze station in Philadelphia, Pa., during the period from May 8 to July 12, 1919, was unjust and unreasonable in violation of section 10 of the federal control act, in comparison with a commodity rate of 4.5 cents contemporaneously applicable on petroleum naphtha between the same stations. Reparation only is sought. Rates will be stated in cents per 100 pounds.

60 L. C. C.

The shipments, aggregating more than 1,500 tons, moved over the Pennsylvania within the city of Philadelphia a distance of about 15 miles. They were loaded in tank cars furnished by complainant. Charges were collected at the applicable minimum fifth-class rate of 9 cents, increased from 5 cents, on June 25, 1918, under general order No. 28 of the Director General of Railroads. On October 1, 1919, a commodity rate of 4.5 cents was established pursuant to complainant's request made May 26, 1919. About one-half of the total quantity had then been shipped. No other shipments of coal-tar naphtha from and to these stations have been made or are in prospect.

Prior to June 25, 1918, a commodity rate of 8.5 cents was applicable on petroleum naphtha from and to the same stations and was increased on that date to 4.5 cents under authority of general order No. 28. On July 31, 1918, a flat increase of 4.5 cents was made in the rate of 3.5 cents in effect May 25, 1918, under freight rate authority No. 96, making the rate 8 cents. On February 5, 1919, the latter rate was reduced to the 4.5-cent rate in effect when complainant's shipments moved.

Complainant contends that in transportation of coal-tar naphtha and petroleum naphtha the service is identical and the rates should be the same as they were on and after October 1, 1919. This coal-tar naphtha was purchased from the United States Navy Department at 12.25 cents per gallon. The market price of petroleum naphtha was then 18 and 18.5 cents. The market price of coal-tar naphtha is not given.

Defendants contend that the class rate applied was proper for this isolated movement, and that from a rate standpoint coal-tar naphtha is not comparable with petroleum naphtha, which moves in heavy volume. They compare the rate assailed with the following rates under which traffic moves in Pennsylvania-New Jersey territory: 9 cents and 10.5 cents on benzol for distances of from 5 to 18 miles; 5.5 cents to 9.5 cents on coal tar, 3 to 34 miles; 6.5 cents on coal tar and petroleum, 3 to 20 miles; and 4.5 cents on crude naphtha oil, 1 to 1.5 miles. Seven of the 14 rates cited by defendants were not in effect when these shipments moved, and none of them applies on coal-tar naphtha or petroleum naphtha.

The rate charged yielded 12 cents per ton-mile. Computed upon the average weight of these shipments, 68,625 pounds, it yielded approximately \$4.12 per car-mile. The average charge per car was \$61.76. If petroleum naphtha had been shipped instead of coal-tar naphtha these figures would have been reduced by one-half. Both commodities are rated fifth class in official classification.

In the recent case of *Atlantic Refining Co. v. Director General*, 60 I. C. C., 355, we found reasonable rates of \$12.50, \$19.50, and \$21 per 60 I. C. C.

car of 110,000, 130,000, and 140,000 pounds capacity, respectively, collected by the same defendants for movement of coal during the period from June 25 to November 15, 1918, inclusive, from this complainant's Philadelphia yard to its Atlantic yard, 1.6 miles in the city of Philadelphia. In *Berg Distilling Co. v. P. R. R. Co.*, 48 I. C. C., 77, we found reasonable a rate of 53 cents per net ton, or 2.65 cents per 100 pounds, charged in 1915 on imported blackstrap molasses in tank cars, averaging \$26 for a carload of 98,000 pounds, moved 2,300 feet in the same city.

We are of opinion and find that the rate applicable was unreasonable to the extent that it exceeded 4.5 cents per 100 pounds; that the shipments were made as described; that complainant paid and bore the charges thereon, and was damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest.

Complainant should comply with rule V of the Rules of Practice.

60 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1244.
COAL TO ATLANTA, GA., VIA CARTERSVILLE
AND W. & A. RY.

Submitted January 7, 1921. Decided February 26, 1921.

Proposed change in routing of coal from mines in Kentucky and Tennessee on the Louisville & Nashville to Atlanta, Ga., beyond Cartersville, Ga., found justified. Order of suspension vacated and proceeding discontinued.

Edward D. Mohr for Louisville & Nashville Railroad Company.
Chas. E. Cotterill for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

By schedules filed to become effective November 24, 1920, it is proposed to change as hereinafter explained the routing of shipments of coal in carloads from mines in Kentucky and Tennessee on the Louisville & Nashville, hereinafter called respondent, for delivery to industries on the Southern's belt line in Atlanta, Ga. Upon protest of the Atlanta Freight Bureau the schedules were suspended until March 24, 1921.

Under existing schedules this coal is routed over the line of respondent to Cartersville, Ga., thence over the Western & Atlantic to John street in Atlanta, and there delivered to the belt line. The Western & Atlantic absorbs the Southern's switching charge of \$2.50 per car for deliveries within 3 miles from their point of interchange at John street and \$2.50 of the Southern's charge of 30 cents a net ton for deliveries beyond. Respondent has acquired trackage rights over the Western & Atlantic from Cartersville to Atlanta and proposes to cancel its present routing and perform the entire transportation service from the mines to Atlanta. Respondent would move the coal over the same rails from the mines to John street, but, having no interchange tracks there, would haul it six city blocks farther to Forsythe street, and there deliver it to the Western & Atlantic. The latter would haul it back to John street and deliver it there to the Southern. Respondent proposes to absorb the charges of the Western & Atlantic for this switching service under schedules filed by both carriers since the suspension, as well

as \$2.50 of the Southern's switching charge from John street, now absorbed by the Western & Atlantic.

The proposed change in routing is prompted by respondent's desire for a longer haul without increase of charge to the shipper. The protest is based upon the contention of the Southern, which is not a party to this proceeding, that the charges to the shipper would be increased if the suspended schedules became effective because, under the Southern's Atlanta switching tariff, delivery to it of this traffic by respondent can only be made at their usual point of interchange at Decatur street, a few blocks beyond Forsythe street, and from Decatur street the distance to practically all industries on the belt line is over 3 miles, whereas from John street it is less than 3 miles.

The Southern's tariff referred to does not limit the application of its switching charges on coal delivered at John street to coal moving into Atlanta over the Western & Atlantic, and under the present provisions of respondent's tariffs the proposed change would not result in increased charges on coal to industries on the Southern's belt line.

We find that the proposed schedules have been justified. Our order of suspension will be vacated and the proceeding discontinued.

60 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1256.¹FISH OIL, CARLOADS, ST. MARYS, GA., TO OHIO AND
MISSISSIPPI RIVER CROSSINGS.

Submitted January 20, 1921. Decided February 26, 1921.

Proposed increased carload commodity rates on fish oil, in barrels or tank cars, from St. Marys, Ga., to Ohio and Mississippi river crossings, Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., found not justified. Suspended schedules ordered canceled.

Frank W. Gwathmey for Seaboard Air Line Railway Company, respondent.

Thomas E. Grady for Southern Fertilizer & Chemical Company, and *Hugo Ignatius* for Procter & Gamble Company, protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective December 10, 1920, and January 5, 1921, respondents propose to increase the carload commodity rates on fish oil, in barrels or tank cars, from St. Marys, Ga., to Ohio and Mississippi river crossings, hereinafter called the crossings, and to Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., hereinafter called the seaports. Upon protest of the Southern Fertilizer & Chemical Company, Savannah, Ga., and the Procter & Gamble Company, Cincinnati, Ohio, the operation of these schedules was suspended until April 9 and May 5, 1921, respectively. Rates will be stated in cents per 100 pounds.

¹ This report also embraces Investigation and Suspension Docket No. 1271, Fish Oil, Carloads, St. Marys, Ga., to Baltimore, Md., Boston, Mass., New York, N. Y., Philadelphia, Pa., and Providence, R. I.

The following are representative of the present and the proposed rates:

From St. Marys, Ga., to—	All-rail rates.		Rail-and-water rates.		Rate increases.
	Present.	Proposed.	Present.	Proposed.	
	Cents.	Cents.	Cents.	Cents.	Cents.
Cincinnati, Ohio.....					
Louisville, Ky.....					
Paducah, Ky.....	61.5	66.5			8
Evansville, Ind.....					
Memphis, Tenn.....					
St. Louis, Mo.....	65.5	102			36.5
East St. Louis, Ill.....					
Boston, Mass.....	82	170.5	50	56.5	
New York, N. Y.....	78.5	87.5	46.5	55.5	
Philadelphia, Pa.....	78.5	87.5	46.5	55.5	
Baltimore, Md.....	72.5	82	46.5	55.5	

¹ Respondents explain publication of this rate as a typographical error and state that it should be 90.5 cents.

It is stated that the proposed rates are constructed by adding 6.5 cents to the rates from St. Marys in effect on August 25, 1920, and increasing the resulting rates to the seaports by 33½ per cent and to the crossings by 25 per cent. These are the percentage increases authorized by us in *Increased Rates, 1920*, 58 I. C. C. 220, and generally made effective on August 26, 1920. The increase proposed to St. Louis and East St. Louis is greater than would result from this method, and it is stated that the greater increase to these points is for the purpose of correcting a maladjustment, which resulted from making the rates to those points the same as to the Ohio River crossings at the time the commodity rates were first published.

The Seaboard Air Line, which assumed the burden of justifying the suspended schedules, and is hereinafter termed respondent, asserts that the proposed increased rates are made upon the theory of applying from Kingsland, Ga., its junction with the Atlantic, Waycross & Northern, an independently operated line extending from Kingsland to St. Marys, and hereinafter called the short line, to the destinations under consideration the same rates which it and its connections receive on traffic from Fernandina, Fla. It states that commodity rates on canned goods, fish scrap, and wrapping paper from St. Marys to both eastern and western points are on a higher basis than from Fernandina, and that a desire to construct the commodity rates on fish oil in the same manner constituted the controlling reason for the changes here under consideration. The increases would make the joint rates from St. Marys higher than from Fernandina by the amount of the division which the short line receives out of the joint rate. That division is at present, and would continue to be under the proposed rates, 8 cents on traffic to the crossings and 8.5 cents on traffic to the seaports.

St. Marys is in the extreme southeastern part of Georgia, at the mouth of the St. Marys River, near the Cumberland Sound and the Atlantic Ocean. It is 11 miles east of Kingsland, and is reached only by the short line. Fernandina is 5 miles by water from St. Marys, and is local to respondent's line, being the terminus of its branch 12 miles from Yulee, the junction with the main line. The latter point is 13 miles southeast of Kingsland; hence on northbound traffic from Fernandina the haul is 14 miles longer than from St. Marys.

The traffic of the short line consists almost entirely of lumber, canned goods, wrapping paper, fish scrap, and fish oil, outbound, the two latter commodities comprising the bulk of the traffic. There is little inbound traffic. Fish oil, after being deodorized, is used in the manufacture of soap stock, which, in turn, is made into soap. It moves in tank cars owned by the shippers, while the other commodities named move in ordinary box cars. Eleven cars of fish oil, averaging about 9,000 gallons per car, moved from St. Marys in 22 months ended December 31, 1920. Ten cars moved from Fernandina during the year 1920. Of the former, 6 went to Cincinnati, 3 to Jersey City, N. J., and 2 to Philadelphia. The Fernandina shipments were to Cincinnati, Newark, N. J., and Kensington, Ill.

Commodity rates on fish oil were first established from St. Marys in 1917 by authority of our Fourth Section Order No. 7002, the relief being granted on the ground of market competition to allow a newly established industry to meet the competition of markets at points on the Gulf and on Chesapeake Bay. Commodity rates from Fernandina were later published upon the same basis, and the rates have remained the same from both points and borne the same increases up to the present time. Respondent asserts that under the present rates it is not earning its proper share of revenue, and denies that the controlling reason for the increases was a dispute with the short line as to the division of the rates. It points to the fact that St. Marys is off its main line, and submitted rate comparisons for the purpose of establishing the reasonableness of the increased rates.

Protestants allege that the proposed increases are made without respect to the level of the rates or the relation of St. Marys to other producing points such as Fernandina and Jacksonville, Fla., and that they are the direct result of a dispute between the carriers as to the division of the rates. In support thereof they refer to certain correspondence of record, including a telegram from the president of the short line to the effect that his company did not authorize the increases here under suspension, but took the position that the rates should be the same from St. Marys as from Fernandina. One witness who has a plant at St. Marys representing an investment of

approximately \$250,000, for the production of fish scrap, fish oil, and canned fish, testified that it is in active competition with producers of fish oil at Fernandina and other points, and that the proposed increases would destroy its business. Another witness testified that a difference of 0.25 cent per gallon in the price of fish oil will sometimes determine where his company will purchase its supply. Various rate comparisons were submitted for the purpose of showing that the proposed rates are unreasonable.

While we have frequently recognized the justification for somewhat higher rates from branch-line points than from main-line points for like distances, the character of the country traversed by the short line and by respondent's branch line to Fernandina is the same, and the conditions under which the traffic moves from St. Marys and from Fernandina to respondent's main line are in all practical respects identical. Under the suspended schedules it is proposed to make the rates from the short-line point higher for a shorter distance than the rates from a point on respondent's branch line for a longer distance. No valid reason appears for maintaining higher rates from St. Marys than from Fernandina. If, as would appear from the record, the carriers can not agree upon the proper divisions under the present rates, recourse may be had to us in an appropriate proceeding. It is apparent that the proposed increases if allowed to become effective would destroy the existing relation in rates between two competing points in the same territory, and would place St. Marys at a disadvantage as compared with Fernandina and other producing points.

We find that the schedules under suspension have not been justified. An order will be entered requiring their cancellation and discontinuing these proceedings.

60 I. C. C.

No. 10981.

GALION IRON WORKS & MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
ET AL.

Submitted October 19, 1920. Decided March 1, 1921.

Rates on cast-iron culverts or culvert pipe, in carloads, from Galion, Ohio, to points in Oklahoma, Kansas, and Nebraska found not to have been or to be unjust, unreasonable, unjustly discriminatory, or otherwise unlawful. Complaint dismissed.

Charles H. Lampen, Luther M. Walter, and Borders, Walter, Burchmore & Collin for complainant.

Charles P. Stewart and L. P. Day for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

Complainant is a corporation engaged in the manufacture and sale of cast-iron culvert pipe at Galion, Ohio. By complaint filed October 25, 1919, it alleges that the rates exacted by defendants for the transportation of cast-iron pipe for culvert purposes, in carloads, from Galion to points in Oklahoma, Kansas, and Nebraska were and are unjust, unreasonable, and unjustly discriminatory in violation of the act to regulate commerce and unjust and unreasonable in violation of section 10 of the federal control act to the extent that they exceeded and exceed the rates contemporaneously applicable on cast-iron pipe from and to the same points. Reparation on shipments made within two years prior to the filing of the complaint and the establishment of reasonable and nondiscriminatory rates for the future are sought. Rates are stated in amounts per 100 pounds and do not include the increases under *Increased Rates, 1920*, 58 I. C. C., 220.

The current class and commodity rates on iron and steel articles from Galion to points in Oklahoma are published in agent Leland's tariff I. C. C. No. 1297 and are governed by the western classification. Practically no evidence was introduced with respect to rates to Kansas and Nebraska. For 20 years or more cast-iron pipe has been
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rated fifth class, in carloads, and fourth class in less than carloads in the western classification. Cast-iron culverts or culvert pipe, in carloads, have also taken the fifth-class rating for several years. Prior to February, 1913, "culverts, iron or steel," were grouped in the western classification under the head of "pipe and fittings." In western classification No. 51, issued in February, 1913, culverts continued to be grouped under pipe and fittings, but there was added an item rating "cast iron culverts" fifth class in carloads. The fifth-class rates from Galion to points in Oklahoma to which most of complainant's shipments are made range from 90 cents to \$1.285, depending upon the group in which the destination is listed. The average distance is about 1,000 miles. Leland's tariff I. C. C. No. 1297 provides commodity rates on "cast iron pipe and connections" from and to the same points ranging from 70 to 81 cents. By alternative application that tariff also contains a commodity rate of \$1 on culvert pipe. This rate is higher than the fifth-class rates in some instances. Complainant contends that both the fifth-class rates and the alternative commodity rate are prohibitive.

Complainant manufactures a culvert pipe of cast iron which is described in its advertising literature as a cast-iron culvert pipe and as a culvert. It is cast on its side in half-sections and is bolted together with lugs. Unlike ordinary cast-iron pipe, culvert pipe has a rough corrugated surface which gives it strength and better fits it for use as a culvert. It is sold generally to road contractors and to state highway officials and is used for conducting water across or under highways. It is shipped set up in from 4-foot to 6-foot lengths, and nested when of different sizes. Several sections or lengths are required to make a culvert.

Complainant contends (1) that its cast-iron culvert pipe properly falls within the commodity description "cast iron pipe and connections," and that the commodity rates sought are applicable thereto; (2) that if its shipments are not entitled to the commodity rates applicable to cast-iron pipe, the fifth-class rates and the alternative commodity rate of \$1 where applicable were and are unjust, unreasonable, and unjustly discriminatory.

Defendants urge that complainant's commodity falls within the term "culverts, iron or steel cast," in the classification and that such separate entry in the classification is justified because culverts are different in character, construction, and use from cast-iron pipe. They also call attention to the fact that culverts are specifically classified in the consolidated classification recently dealt with by us in the *Consolidated Classification Case*, 54 I. C. C., 1.

The record shows that while culvert pipe is made of cast iron, and in that respect is similar to an ordinary cast-iron pipe, it is, as urged

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by defendants, different in character, construction, and use from cast-iron pipe. Moreover, culvert pipe is specifically described and rated in the classification. Some years ago complainant in billing its shipments described them as cast-iron pipe. Defendants objected to this description as improper, declined to apply the cast-iron pipe rates and charged the fifth-class rates. The record justifies the conclusion that complainant's shipments here under consideration are in fact culverts, not cast-iron pipe as that term is used in the commodity description, and that the fifth-class rates or the alternative commodity rate were and are applicable thereto.

There remains for consideration the question whether the fifth-class rates, or the alternative commodity rate where applicable, were or are unreasonable or unjustly discriminatory to the extent that they exceeded or exceed the commodity rates contemporaneously applicable to cast-iron pipe. In general, iron and steel articles from points in the Detroit-Cleveland territory to points in Oklahoma, Kansas, and Nebraska take the fifth-class rates. Commodity rates on cast-iron pipe were established primarily to points in Texas to meet competition then existing with cast-iron pipe manufactured at Rusk, Tex., as well as water competition from eastern seaboard points via Gulf ports to points in Texas. As Oklahoma points are intermediate to these Texas points via the all-rail routes, the commodity rates were soon extended to Oklahoma points, and later to points in Kansas and Nebraska. But the record shows that much of the cast-iron pipe to Texas points is now shipped from the Birmingham district, and that the reasons which caused the establishment of commodity rates on cast-iron pipe from the territory here considered have to some extent disappeared.

Defendants assert that the reasons which brought about the relatively low commodity rates on cast-iron pipe had and have no application to culvert pipe. Cast-iron pipe moves in large quantities. It was testified that the United States Cast Iron & Foundry Company alone, under normal conditions, ships annually from its numerous plants approximately 3,600,000 tons to various points in the United States. The tonnage of culvert pipe is small by comparison. The record shows that in 1917 complainant shipped to various points 7,700 tons of culvert pipe; in 1918, 4,000 tons; and in 1919, 3,000 tons. The fact that the tonnage in cast-iron pipe is greater than in culvert pipe would not of itself justify a higher rate on the latter. But we have often recognized that volume of tonnage may in some circumstances warrant the establishment of a commodity rate lower than the class rate normally applicable.

The weight per linear foot of culvert pipe is 40 pounds, and of cast-iron pipe 72 pounds. Culvert pipe can be loaded and trans-

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ported in any kind of car, and its liability to damage is negligible. Its value per linear foot is less than the value of cast-iron pipe, although its value per ton seems to be greater. The average loading of culvert pipe is approximately 47,000 pounds.

The evidence upon the question of competition between culvert pipe and cast-iron pipe is not convincing. There appears to be some competition, but it is not active, and a witness for complainant admitted that such competition as exists in Oklahoma is with corrugated culvert pipe.

In *Greenburg Iron Co. v. C. & E. I. R. R. Co.*, 38 I. C. C., 38, and 44 I. C. C., 263, it was alleged that galvanized corrugated sheet-steel culverts were entitled to the commodity rate applicable on sheet-iron pipe from Terre Haute, Ind., to points in Texas. We found that the shipments "were culverts and not merely sheet iron pipe." In dismissing the complaint we said:

The existence of a commodity rate on sheet steel pipe * * * does not afford a sufficient basis for the establishment of a similar commodity rate on culverts. The commodity rate on sheet steel pipe is not shown to injure complainant.

The same may be said here as to the respective rates on culvert pipe and cast-iron pipe.

We find that the rates assailed were not and are not unjust, unreasonable, unjustly discriminatory, or otherwise unlawful. The complaint will be dismissed.

60 I. C. C.

No. 11483.
CAIRO ASSOCIATION OF COMMERCE
v.
BUTLER COUNTY RAILROAD COMPANY ET AL.

Submitted October 25, 1920. Decided March 1, 1921.

Class rates between Cairo, Ill., and points in southeast Missouri found to be reasonable but to be unduly prejudicial to Cairo to the extent that they exceed by more than reasonable bridge tolls the rates contemporaneously maintained by defendants for similar distances between points in southeast Missouri. The undue prejudice ordered removed.

Ray Williams for complainant.

Henry G. Herbel, James M. Chaney, M. G. Roberts, Daniel Upthegrove, and A. H. Kiskaddon for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, *Commissioner*:

A proposed report was served upon the parties. Exceptions thereto were filed by defendants.

Complainant is a corporation representing the interests of its members at Cairo, Ill. By complaint filed May 17, 1920, it alleges that the class rates between Cairo and points in Missouri are unjust, unreasonable, and unduly prejudicial, and unduly preferential of commercial and industrial interests within the state of Missouri. The establishment of just, reasonable, and nondiscriminatory rates for the future is asked. The Missouri Public Service Commission was notified of the proceeding, but was not represented at the hearing. The testimony at the hearing was confined to the rates between Cairo and points in Missouri on and south of the line of the St. Louis-San Francisco Railway from Cape Girardeau through Mingo and Williamsville as far west as Willow Springs. This territory will hereinafter be referred to as southeast Missouri. Rates herein referred to do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Cairo is in the extreme southern portion of Illinois at the confluence of the Ohio and Mississippi rivers. To reach southeast
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Missouri territory, the traffic is hauled north on the Illinois side of the Mississippi River to Thebes, Ill., for a distance of 28 miles, thence across the river via the Thebes bridge to Delta, Illmo, or Chaffee, Mo., thence south on the Missouri side of the Mississippi to destinations in southeast Missouri.

On April 1, 1917, the rates applicable from Cairo to Missouri points were based on the Missouri state one-line distance scale, with the addition of a bridge toll to cover the Thebes crossing. The present rates from Cairo to points in southeast Missouri are based on the distance scale, with arbitraries for extra line hauls, established by this Commission, effective February 16, 1920, in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, for application between points in Arkansas, Oklahoma, and southern Missouri, and hereinafter referred to as the Memphis-Southwestern scale. That scale is used for the distances from Cairo to Missouri destinations, via Thebes, with the addition of bridge tolls for the Thebes crossing the same as those fixed in the case cited for the Memphis crossing. In making the rates to and from points on the Butler County and the St. Louis, Kennett & Southeastern railroads, short lines, the Memphis-Southwestern scale plus the bridge charge is applied for the short-line distance, and the Arkansas state differentials for such short lines are added. The addition of such differentials for these short lines was tentatively approved by us in the case cited with respect to traffic to and from Memphis.

For complainant it is admitted that rates between Cairo and southeast Missouri points based on the Memphis-Southwestern scale with the addition of a bridge toll are reasonable. It is contended, however, that the mileage used in fixing these rates should be computed through Bird's Point, Mo., and not through the Thebes gateway. This contention is predicated upon the assumption that a route is open from Cairo to points in southeast Missouri via Bird's Point. Freight was formerly transferred by boat from Cairo down the Ohio River and across the Mississippi, a distance of from 3 to 5 miles, to inclines maintained by the St. Louis Southwestern and Missouri Pacific railroads, thence through Bird's Point to destinations in southeast Missouri. These inclines were washed away about 10 years ago and have never been restored, although unsuccessful attempts have been made to put the banks in proper condition for their restoration. A transfer boat is now operating between Cairo and Bird's Point for the transportation of passengers and express, but no freight has been carried via the Bird's Point route since the inclines were washed away. In *Paducah Board of Trade v. I. C.*

60 I. C. C.

B. R. Co., 37 I. C. C., 719, 721, decided in 1916, we said with reference to the Bird's Point route:

There can be no question, however, of the impropriety of measuring distances over a route which has been closed for more than two years, especially since there is no prospect of its being reopened in the immediate future.

Defendants admit that the maintenance of rates within the state of Missouri relatively lower than the class rates in effect between Cairo and southeast Missouri points is unduly preferential of commercial and industrial interests located in that state, and is unduly prejudicial to Cairo shippers. The following table is a comparison of the rates from Cairo to destinations on the St. Louis-San Francisco Railway in southeast Missouri, where the haul is in all cases at least a two-line haul, with the Missouri state two-line scale. The first five classes are representative of all the class rates in this territory. Transportation conditions under which traffic moves between Cairo and southeast Missouri are substantially similar, except for the river crossing, to the conditions governing the corresponding movement of traffic between southeast Missouri points.

From Cairo, Ill., to—	Dis- tances.	Class rates per 100 pounds.				
		1	2	3	4	5
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.
Cape Girardeau, Mo. ¹	36	53	45.5	38.5	32	26
Do. ¹		44	37.5	31.5	26.5	21.5
Brownwood, Mo. ¹	56	60.5	53	45.5	37	30
Do. ¹		49	41.5	34	29	24
Poplar Bluff, Mo. ¹	100	67.5	57.5	48	41	32.5
Do. ¹		59	50	41.5	35	29
Hunter, Mo. ¹	119	83	70.5	59	50	40.5
Do. ¹		64	54	45	37.5	31.5
Winona, Mo. ¹	156	97.5	83	69	59	47.5
Do. ¹		74	62.5	51.5	44	36.5
Willow Springs, Mo. ¹	194	107.5	92	76.5	64.5	52.5
Do. ¹		82.5	70	57.5	49	40
Gibson, Mo. ¹	103	77.5	66.5	55.5	47	38
Do. ¹		60	51.5	42.5	36.5	29
Kennett, Mo. ¹	117	83	70.5	59	50	40.5
Do. ¹		64	54	45	37.5	31.5
Arbyrd, Mo. ¹	134	88.5	76.5	63.5	53.5	43.5
Do. ¹		67.5	57.5	47.5	40	32.5
Naylor, Mo. ¹	120	75	63.5	53	45	36.5
Do. ¹		64	54	45	37.5	31.5
Slackton, Mo. ¹	84	62	53	44.5	37	30
Do. ¹		55	46.5	39	32.5	26.5
Lilbourn, Mo. ¹	81	70	60	50.5	42	34
Do. ¹		56	46.5	39	32.5	26.5
Caruthersville, Mo. ¹	115	81	69.5	58	49	40
Do. ¹		62.5	54	44	37.5	30
Steele, Mo. ¹	119	83	70.5	59	50	40.5
Do. ¹		64	54	45	37.5	31.5

¹ Present rates.

² Missouri state two-line scale.

In *Memphis-Southwestern Investigation, supra*, we found the rates from St. Louis, Mo., to southeast Missouri, which were based on the Missouri state scale applying in southeast Missouri, to be on an unduly low basis. Comparison with the Oklahoma and Arkansas state scales, and with the Memphis-Southwestern scale applicable on 60 I. C. C.

interstate traffic between Missouri and Arkansas and Missouri and Oklahoma points, for a one-line haul, is given in the following table compiled from exhibits introduced by the defendants:

Rate bases.	Dis- tances.	Class rates per 100 pounds.				
		1	2	3	4	5
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Missouri state scale.....	150	62.5	52.5	44	37.5	31.5
Arkansas state scale.....	150	83	70.5	58	50	40
Oklahoma state scale.....	150	73	62	51	44	34
Memphis-Southwestern scale.....	150	83	70.5	58	50	40

The population of the counties in southeast Missouri within a short distance of Cairo was more than 180,000 in 1910, and is said to be possibly double that figure at the present time. Cairo jobbers look to this part of Missouri as natural distributing territory. Its merchants have been deprived, however, of much business right at their door.

We find that the rates assailed between Cairo and southeast Missouri points are reasonable, but that they are and for the future will be unduly prejudicial to Cairo to the extent that they exceed by more than reasonable bridge tolls the corresponding rates contemporaneously maintained by defendants for like distances over similarly classified roads between points within the territory defined as southeast Missouri. An order will be entered requiring the defendants to remove the undue prejudice.

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No. 11105.

UNITED CHEMICAL & ORGANIC PRODUCTS COMPANY
ET AL.

v.

DIRECTOR GENERAL, AS AGENT, INDIANA HARBOR
BELT RAILROAD COMPANY, ET AL.

Submitted February 18, 1921. Decided March 1, 1921.

Refusal of Indiana Harbor Belt Railroad Company to grant an allowance to complainants for the cost of switching performed by complainants found to have resulted in unreasonable and unduly prejudicial charges for transportation. Reparation awarded.

Elias Mayer and W. S. Hefferan, jr., for complainants.

D. P. Connell, Charles D. Clark, and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, *Commissioner*:

This case was made the subject of a proposed report by the examiner. Exceptions thereto were filed by complainants, by the Indiana Harbor Belt Railroad Company, and by the Director General of Railroads, and the case was orally argued before us.

At West Hammond, Ind., within the Chicago switching district, are located extensive plants of the United Chemical & Organic Products Company,¹ and its subsidiary, the Central Chemical Company, both corporations, complainants herein. The former is engaged in the manufacture of glue, gelatine, and fertilizers, and the latter in the manufacture of sulphuric, nitric, and muriatic acids. Their plants lie adjacent to the tracks of the Indiana Harbor Belt, Baltimore & Ohio Chicago Terminal, and Michigan Central railroads, defendants herein. A system of tracks consisting of numerous spurs spreads throughout complainants' plants. Formerly defendants performed all the switching on both inbound and outbound traffic to and from the various points of loading and unloading within the plants. Since February 1, 1917, the United Products Company has, at its

¹ This company on May 1, 1917, succeeded Hirst-Stein & Company and was the assignee of all the assets. Both companies will be referred to as the United Products Company.
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own expense and with its own engine, done all the switching both within its own plant and that of the Central Chemical Company.

Complainants allege that defendants' refusal to make an allowance for the switching service so rendered on inbound and outbound interstate traffic results in the payment of transportation charges that are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable allowance for the future and to award reparation for service performed in the past.

At the outset it should be stated that if the service in question is a transportation duty the carriers may elect either to do it themselves or to hire the shipper to do it for them; but their practices in this respect must be free from undue prejudice. *Buckeye Steel Castings Co. v. H. V. Ry. Co.*, 58 I. C. C., 500.

In the instant case defendants at the hearing, March 26, 1920, signified their willingness to do the spotting if complainants demand it, but complainants do not make such demand. Complainants maintain that increased traffic and shortage of equipment will prevent adequate or satisfactory service by defendants; they prefer to continue to perform their own spotting, and seek to show that to do so would be in the interest of economy and efficiency. As previously stated the giving of an allowance in lieu of performing spotting services is optional with the carriers.

It was stipulated that defendants have performed and now perform spotting service for competitors of complainants, similarly situated within the Chicago switching district, without charge in addition to the line-haul rate; but, as defendants stand ready to perform the spotting and complainants do not desire to avail themselves of the offer, any advantage which accrues to complainants' competitors by the acceptance of defendants' spotting service is due not to defendants' delinquency but rather to complainants' attitude.

There remains for consideration a question whether defendants ever hired the United Products Company to do the spotting, and if so, whether it should have reparation for the expense incurred.

As previously stated, the United Products Company has been doing its own spotting and that of the Central Chemical Company since February 1, 1917. Its doing so was voluntary, but the direct result of negotiations previously had with an official of the Indiana Harbor Belt, who orally stated that an allowance would be made if the shipper performed the service. No definite arrangements were made as to the amount of the allowance, but complainants were provided with blanks so that a cost record of the switching could be kept and used as a basis for further negotiations as to the amount of the allowance. Subsequently federal control intervened, and when complainants presented their claim for payment it was declined, the

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contract having not been consummated and no tariff filed authorizing an allowance. Since complainants, in undertaking to perform the spotting, relied upon the agreement above referred to, the Indiana Harbor Belt should not now be heard to say that it has always been ready and willing to perform the spotting, and that complainants voluntarily relieved it from performing the service. This is particularly true in view of the fact that the Indiana Harbor Belt's tariff specifically provided that freight charges published by it, or in tariffs to which it is a party, contemplate delivery of loaded cars to, and taking of loaded cars from, places of unloading and loading at industries on its line.

We find that so far as the Indiana Harbor Belt Railroad Company is concerned, the United Chemical & Organic Products Company was subjected to the payment of unjust, unreasonable, and unduly prejudicial charges; that it was thereby damaged to the extent of the cost of such service in connection with all interstate shipments delivered to or received from the Indiana Harbor Belt Railroad Company from February 1, 1917, to March 26, 1920, except such as were spotted in the plant of the Central Chemical Company prior to February 2, 1920, on which date that company became a subsidiary of the United Chemical & Organic Products Company. Prior to that time the two concerns were independent. The exact amount of reparation due can not be determined on this record. The evidence indicates that the total cost of the spotting in 1917 was \$20,623.39 and in 1918, \$25,187.76. The parties should prepare a statement showing by calendar years the items of cost of the spotting service, the total number of cars spotted, the average cost per car, the number of complainants' interstate cars spotted for the Indiana Harbor Belt, and the amount of reparation claimed. Upon receipt of such a statement, the entry of an order awarding reparation will be considered. In this connection it should be stated that the finding of damage is predicated on the finding that unreasonable charges were exacted.

Section 15 of the act provides for an allowance only "if the owner of property transported * * * directly or indirectly renders any service connected with such transportation." It has not been shown, and we do not think, where evidence is available, it is appropriate to assume that the Central Chemical Company or the United Products Company is entitled to reparation for cars spotted in the plant of the former prior to February 2, 1920. The record does not show that the Central Chemical Company bore any of the expenses or rendered any service in connection with the spotting service either directly or indirectly. For aught that appears the United Products Company did

the spotting for both at its own expense, and as the two companies prior to the date named were separate legal entities the company named was not the "owner of property transported," within the meaning of the act, as to such cars as were spotted in the plant of the Central Chemical Company. Such finding will not preclude an opportunity to show, upon proper request, that in this matter the United Products Company was the duly authorized agent of the Central Chemical Company.

Complainants of their own volition relieved the other carrier defendants from the necessity of performing spotting, and complainants can not now be heard in a demand for compensation from these carriers for such past services.

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No. 11915.

GEORGIA RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND CHARGES OF THE ATLANTA & WEST POINT RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF GEORGIA.

Submitted February 1, 1921. Decided March 8, 1921.

Rates and charges on cotton, cotton linters, and brick, applied intrastate in Georgia by requirement of the Georgia state authorities, found to result in undue prejudice to shippers of interstate traffic, in undue preference of shippers of intrastate traffic, and in unjust discrimination against interstate commerce.

Henry Thurtell and *W. N. McGehee* for respondent steam carriers.
James K. Hines for Railroad Commission of Georgia.

Ben Gilham for Macon Chamber of Commerce and Georgia Brick Manufacturers Association; *Thomas J. Burke* for Charleston Traffic Bureau; *J. A. VonDohlen* for Carolina Company; *J. D. Harvey* for Southern Clay Manufacturing Company; and *James E. Grady* for Savannah Board of Trade.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

In respect of cotton, cotton linters, and brick, the only commodities involved in this proceeding, it is contended by the respondent Georgia steam railroads that interstate commerce is being unduly prejudiced, and intrastate commerce unduly preferred, by the refusal of the Railroad Commission of Georgia to permit the same increase of 25 per cent in freight rates between points in that state that we permitted in *Increased Rates, 1920*, 58 I. C. C., 220, hereinafter referred to as *Ex Parte 74*, between points in Georgia and points in other states. The Georgia commission, following that decision, permitted a 25 per cent increase between points in Georgia on the classes, and on all commodities except those named, as to which the carriers' application was denied. Passenger fares are referred to in the above title and in the order instituting the investigation, but it developed at the hearing that no question was presented with respect to them. By our order of investigation all railroads subject to our jurisdiction operating within the state of Georgia were made respondents, but no 60 I. C. C.

electric lines offered evidence and the term "carriers" as hereinafter used means steam carriers only.

Georgia ranks next to Texas in the production of cotton. Last year it produced 1,770,493 bales, 1,129,850 of which moved to Georgia points. Cotton is said by the carriers to be the most important commodity to the railroads in Georgia. Based on the tonnage for the 12 months ended July 31, 1920, the direct loss in revenues to the Georgia railroads resulting from the failure of the carriers to receive the desired increase in their intrastate rates on cotton and cotton linters is estimated by the carriers at approximately \$588,000 annually. The loss to the carriers in the revenues on brick, from the same cause, is estimated by them at an additional \$44,000.

The state commissions of North Carolina, South Carolina, Alabama, Louisiana, Tennessee, Arkansas, and Oklahoma have authorized the carriers to make the same percentage increase on cotton and cotton linters moving intrastate that we permitted on interstate traffic. The Texas commission authorized an increase of 38½ per cent, compared with our authorization of 35 per cent. On cotton and brick and certain other commodities the Florida commission has denied increases corresponding to those authorized by us in Ex Parte 74 for the southern group in which Florida and Georgia are located. That matter will be considered in a separate report.

The state and interstate rates throughout the country were increased in the same amounts under general order No. 28 of the Director General of Railroads on June 25, 1918. Those increases were 15 cents¹ on cotton and cotton linters and 2 cents on brick. The rate on cotton linters was then increased to the cotton basis. These increases were made effective in Georgia.

The spread between the intrastate and interstate rates in Georgia ranges from 6 to 19 cents on cotton and from 0.5 cent to 8 cents on brick. On cotton and cotton linters the average is estimated at from 12 to 14 cents by the carriers, and at not over 10 cents by the Georgia commission. On brick the average is estimated at 2 cents by the carriers and at not more than 1.4 cents by the Georgia commission.

There is shown to result a general disturbance of the relationship between the Georgia intrastate and the interstate rates on cotton. The rates from Georgia points to the ports of Savannah and Brunswick, Ga., are 25 per cent higher for export or interstate movement beyond than for local shipments, the result being that cotton is now billed locally to the ports that otherwise would be shipped at the interstate or export rate. From August 26, 1920, the effective date of the increased interstate rate, which prior thereto was the same

¹ All rates herein are stated in cents per 100 pounds, unless otherwise specified.

as the local rate, to December 6, 1920, the opening date of this hearing, the number of bales shipped to Savannah and Brunswick as export or interstate cotton was only 25,000 compared with local shipment of 148,000 bales. From 41 Georgia points shown in one of the carriers' exhibits the adjustment has been changed from an equality in rate on intrastate and interstate shipments to differences ranging from 7 to 16 cents in favor of the local shipments.

Charleston, S. C., affords another illustration. The rates to Charleston were formerly the same as to Savannah from points on and north of the line of the Georgia Railroad from Augusta to Atlanta, Ga., and on and north of the line of the Southern Railway from Atlanta to Birmingham, Ala., and 5 cents higher than to Savannah from Georgia points south of those lines. This adjustment was approved by us as a compliance with our findings in proceedings which culminated in *New Orleans Cotton Exchange v. L. & N. R. R. Co.*, 49 I. C. C., 271. The adjustment described has been changed so that from Georgia points on and north of the lines described the rates to Charleston range from 10 to 15.5 cents higher than to Savannah, and from Georgia points south of those lines the rates to Charleston range from 19 to 27.5 cents higher than to Savannah. As a result of the present adjustment the carriers operating in South Carolina are now threatened with a reduction of their intrastate rates from South Carolina points to Charleston to the basis of the Georgia intrastate rates to Savannah. Contrasted with this adjustment from Georgia points the interstate rates from Chattanooga, Tenn., and Anniston, Ala., are the same to Charleston as to Savannah.

The relationship between rates on cotton from Alabama points and from Georgia points intermediate thereto has been disturbed, as shown by the former adjustment, to Savannah, of 62 cents from Roanoke, Ala., and 60 cents from LaGrange, Ga., an intermediate point, and the present rates of 81.5 cents from Roanoke and 60 cents from LaGrange. Similar disturbances have been made in the relationships between the rates from Opelika, Eufaula, Columbia, and Dothan, Ala., and from Georgia points intermediate thereto.

The present adjustment gives an advantage to the Georgia purchaser of Georgia cotton over the Alabama purchaser of Georgia cotton, as illustrated by cotton which originates at points on the Central of Georgia between Eufaula, Ala., and Dawson, Ga., and at points on the Fort Gaines branch of that carrier. The former rate was 60 cents from these stations to Savannah on cotton concentrated at Eufaula or Dawson, while the present rates are 79 cents on cotton concentrated at Eufaula and 60 cents on cotton concentrated at Dawson, and subsequently reshipped to Savannah.

The Georgia shipper to Georgia mills has an advantage over the shipper to the same mills from points in neighboring states, as shown by the situation at Toccoa, Ga., on the line of the Southern Railway between Washington, D. C., and Atlanta. The Georgia rate for 25 miles to Toccoa is 29 cents. The rate from a South Carolina point 25 miles away to Toccoa is 41.5 cents. In past years 67 per cent of the cotton consumed by Toccoa mills was South Carolina cotton. To-day the South Carolina cotton is practically excluded from Toccoa. The rate would still be 5 cents in favor of the Georgia shipper if the desired rate of 36.5 cents were established from the Georgia point.

The Georgia shipper to Savannah has an advantage over the South Carolina shipper to Savannah. Typical comparisons are of the rates of 45 cents for 54 miles from Yemassee, S. C., and 35 cents for 55 miles from Cameron, Ga.; 51.5 cents for 90 miles from Ravenal, S. C., and 39 cents for 87 miles from Rogers, Ga.; 62.5 cents for 177 miles from Alston, S. C., and 50 cents for 174 miles from Coney, Ga.; and 69 cents for 246 miles from Hodges, S. C., and 55 cents for 246 miles from Madison, Ga.

Reference is made to the fact that certain interstate routes between points in Georgia which are not unduly circuitous by comparison with the intrastate routes between the same points, and over which a substantial volume of traffic has heretofore moved, will be closed, so far as the movement of cotton and brick are concerned, because of the difference in rates in favor of the intrastate routes. For example, the Charleston & Western Carolina, which participates in interstate rates between Augusta and Savannah, and between Augusta and Atlanta, and has no intrastate route between those points, is now practically barred from participation in the traffic. All of the 11,000 bales and more of cotton shipped from Augusta to Savannah locally from August 26, 1920, to November 8, 1920, moved over intrastate routes. From Toccoa to Savannah the interstate route of the Southern of 348 miles is shorter than the intrastate route of that carrier of 886 miles, yet the intrastate route is used because the rate of 64 cents over that route is 16 cents less than the interstate rate of 80 cents.

Another relationship of rates affected is that between Savannah and Mobile, Ala. From Central of Georgia stations in western Georgia the maximum difference between the export rates to Mobile and the export rates to Savannah is 2.5 cents, while the difference between the export rates to Mobile, which were increased 25 per cent, and the local rates to Savannah, which were not so increased, but are now moving the bulk of the traffic to that port, ranges from 17.5 to 23.5 cents. The relationship thus in practical effect disrupted

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was approved by us in *Mobile Chamber of Commerce v. M. & O. R. R. Co.*, 57 I. C. C., 554, where we found, in respect of originating points in western Georgia, that the rates to Mobile were not unreasonable, but that the relationship between the rates to Mobile and Savannah for export was such as to subject Mobile to undue prejudice and disadvantage and to give to Savannah an undue preference and advantage.

The carriers present the following comparisons of rates from Georgia points to Savannah with other rates in the southeast and in Texas:

	Distances.	Rates.
	Miles.	Cents.
Bartow, Ga., to Savannah, Ga.....	111	42
Gadsden, S. C., to Charleston, S. C.....	111	54
Orchard Hill, Ga., to Savannah, Ga.....	245	55
Gaffney, S. C., to Charleston, S. C.....	244	69
Milledgeville, Ga., to Savannah, Ga.....	188	50
Jackson, Miss., to New Orleans, La.....	184	72.5
Rome, Ga., to Savannah, Ga.....	365	62
Holly Springs, Miss., to New Orleans, La.....	370	90
Atlanta, Ga., to Savannah, Ga.....	292	58
Anniston, Ala., to Mobile, Ala.....	394	75
Rome, Ga., to Savannah, Ga.....	365	62
Decatur, Ala., to Mobile, Ala.....	360	81.5
Tennille, Ga., to Savannah, Ga.....	135	52
Meridian, Miss., to Mobile, Ala.....	135	66.5
Thomasville, Ga., to Savannah, Ga.....	201	53
Lockhart, Tex., to Galveston, Tex.....	301	94.5
Greenville, Ga., to Savannah, Ga.....	305	60
Marshall, Tex., to Galveston, Tex.....	305	96

The same general disturbances of the relationships between rates in Georgia and in other states, and between the rates in Georgia and the rates from and to neighboring states, is found in the case of brick. There are approximately 33 brick-producing plants in Georgia, including plants just over the boundary line from points in other states. There are about 43 brick-manufacturing plants in Alabama, 36 in Tennessee, 60 in North Carolina, 15 in South Carolina, and 13 in Florida, which compete, or may compete, with Georgia yards.

An illustration is afforded by the rates from Adairsville, Ga., to Atlanta and from Nashville, Tenn., to Atlanta, which prior to Ex Parte 74, were 4 and 11 cents, respectively, and are now 4 and 14 cents. The exhibit from which this illustration was taken shows that the 12 interstate shipping points are required to meet an additional advantage to the 10 intrastate shipping points ranging from 75 cents to \$2.25 per 1,000 brick. Each rate shown on this exhibit

was an active going rate during the 12 months shortly preceding the hearing.

Another illustration is afforded by the rates to Athens, Ga., which, prior to August 26, 1920, were 7 cents from Columbus, Ga., 9 cents from Chattanooga, Tenn., and 14 cents from Nashville, Tenn., and are now 7 cents from Columbus, 11.5 cents from Chattanooga, and 17.5 cents from Nashville. It is said that the manufacturers at Chattanooga and Nashville can not, as they did formerly, shrink out of their profits the difference between the rates from those points and from Columbus. During the month following the increase in the interstate rates from Chattanooga and Nashville no brick was shipped to Athens from Nashville and but one carload from Chattanooga, while there were 10 carloads from Columbus.

As bearing on the question of their reasonableness the Georgia intrastate rates on brick are shown to rule generally lower than the average rates in central, eastern trunk line, and western trunk line territories, and between those territories, as computed by the complainants in *National Paving Brick Manufacturers Assn. v. A. & V. R. R. Co.*, No. 10733, now pending, which involves the general fabric of brick and tile rates throughout the country. The average existing rates were computed in that proceeding from the returns from questionnaires affecting approximately 4,250,000 tons of brick in central territory and the other territories affected.

The record is replete with illustrations similar to those given of newly created and increased disadvantages to shippers to and from Georgia from and to other states, and corresponding advantages to the Georgia intrastate shipper. The circumstances and conditions of transportation within Georgia and neighboring states, and between Georgia and those states, are shown by the record to be substantially similar. The present intrastate rates on cotton, cotton linters, and brick, if increased 25 per cent, would appear to be reasonable under recognized standards of reasonableness, including comparisons with other rates on the same commodities, and on other commodities of similar or less favorable transportation characteristics, shipped throughout the same general territory, or in territory of comparable transportation conditions.

The Georgia commission offered no evidence, but on brief stated that its action in withholding approval of the increased rates on cotton, cotton linters, and brick was influenced by the following reasons:

(1) General order No. 28, in increasing rates on cotton 15 cents, regardless of distance, deprived Georgia consumers of the natural advantage of Georgia markets, and permitted foreign consumers to

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invade the markets of local Georgia mills and buyers, and discriminated against the latter.

(2) The carriers receive 15 cents per 100 pounds, or 75 cents a bale, more on the Georgia intrastate cotton, which is usually shipped short distances without compression, than they do on export cotton and on cotton shipped interstate to the Carolinas and New England, which must be compressed, and on which the carriers absorb the compression charges in the above amounts. It is said that the compression absorption is worth millions of dollars to the cotton trade.

(3) The rate increase under general order No. 28 for 75 miles, the average distance cotton is hauled in Georgia, amounted to 65.2 per cent, while on practically all other commodities the increase was 25 per cent, thereby unduly discriminating against Georgia intrastate cotton.

(4) After placing cotton linters, a lower-grade and lower-priced commodity than cotton, on the cotton basis, under general order No. 28, to make an additional increase of 25 per cent in the resulting rates would practically destroy commerce in cotton linters.

(5) To impose on cotton, cotton linters, and brick the 25 per cent increase would place the transportation of these articles over two or more lines, and for greater distances, upon the same basis as the transportation over direct intrastate lines fewer in number. For example, the rate from Bremen, Ga., to West Point, Ga., over the Central of Georgia to Senoia, Ga., the Atlanta, Birmingham & Atlantic thence to Standing Rock, Ala., and the Chattahoochee Valley Railroad thence to West Point would be the same as over the direct two-line haul of the Central of Georgia to Newnan, Ga., and the Atlanta & West Point Railroad beyond.

The circumstances relied upon by the Georgia commission are not unlike those existing in other states in the southern group which have permitted the same increases as authorized by us, or in which, upon investigation, we have ordered that such increases be made.

The Georgia commission also urges that the carriers' estimate of an annual loss of approximately \$588,000 on cotton and cotton linters is exaggerated because it is based upon the application of the intrastate rate on all cotton shipped to Savannah or Brunswick, although nearly all of the cotton shipped to the ports is said to be for export or interstate shipment beyond; because the carriers receive on export or interstate cotton 15 cents per 100 pounds, or 75 cents a bale, the amount of the absorbed compression charge, less than on the intrastate cotton, which is usually shipped for short distances without being compressed; and because of the alleged impropriety of comparing the volume of cotton shipped during the 1919-1920 season

with that shipped during the 1920-1921 season, in view of the small volume of cotton shipped since August 1, 1920, on account of the farmers and others withholding it from the market. However, it is not denied that a substantial loss of revenue would result.

Attention is directed by the Georgia commission to the fact that this proceeding was not initiated by shippers and localities affected, but by the Georgia railroads, and to the further fact that the discrimination complained of by the carriers has resulted from Ex Parte 74. The suggestion is made in the latter connection that if we may raise interstate rates, and then entertain a charge of discrimination upon the resulting increase, or initiation, of a spread between the increased interstate rates and the intrastate rates within a state, the power of the state commissions will be swept away. This suggestion ignores the fact that the increases in interstate rates authorized by us in Ex Parte 74 were made pursuant to the provisions of the interstate commerce act. It was our conclusion that the various increases would result in transportation charges—

not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition.

If the integrity of the interstate rates is to be maintained and the fundamental purposes of the interstate commerce act carried out, it is obvious that regulation by the state commissions of intrastate rates can not be exercised in such a way as to result in undue prejudice against interstate shippers or unjust discrimination against interstate commerce.

Counsel for the Georgia commission stated that if we adhered to our views, announced in *Rates, Fares, and Charges of N. Y. C. & R. R. Co.*, 59 I. C. C., 290, *Intrastate Rates within Illinois*, 59 I. C. C., 350, and in subsequent similar cases, there could be expected no different conclusion in this proceeding, the general questions at issue being the same in all these cases.

We find that the increases made by the carriers in the rates for the transportation of cotton, cotton linters, and brick under our decision relating to the southern group in Ex Parte 74, and now in effect, result in reasonable charges for the interstate transportation of those commodities within the said group, and that the failure of said respondents within the state of Georgia correspondingly to increase their intrastate rates and charges for the transportation of said commodities in force on the date of our decision in Ex Parte

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74 has resulted in the past and will result in the future in undue prejudice to shippers of interstate traffic, in undue preference of shippers of intrastate traffic, and in unjust discrimination against interstate commerce.

We further find that said prejudice, preference, and discrimination should be removed by making increases in the intrastate rates and charges for the transportation of cotton, cotton linters, and brick in force on the date of our decision in *Ex Parte 74*, which shall correspond with the increases heretofore made as aforesaid by said respondents under *Ex Parte 74* and now in effect in their interstate rates and charges for the transportation of said commodities in the southern group.

These findings are without prejudice to the right of the authorities of the state of Georgia or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specific intrastate charge or charges for the transportation of cotton, cotton linters, and brick on the ground that the latter are not related to the interstate charge or charges for the transportation of those commodities in such a way as to contravene the provisions of the interstate commerce act.

Schedules giving effect to these findings may be made effective on not less than five days' notice.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.

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No. 11018.

WICHITA BOARD OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ALEXANDRIA &
WESTERN RAILWAY COMPANY, ET AL.

Submitted October 15, 1920. Decided March 1, 1921.

Rates on horses and mules, in carloads, from Wichita, Kans., to points in Arkansas, Louisiana, Texas, and to Memphis, Tenn., found not unreasonable except as indicated, but, except to Memphis, found unduly prejudicial to the extent that they exceed the rates contemporaneously maintained on like traffic from Kansas City to the same destinations, and to Memphis unduly prejudicial to the extent that they exceed the rates contemporaneously in effect from Kansas City by more than \$10 per standard car, with rates on larger cars in proportion. Undue prejudice ordered removed. Reparation awarded on certain shipments.

W. P. Huston for complainants.

A. B. Enoch and *J. A. La Coste* for defendants.

John F. Finerty for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

FORD, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner, and exceptions were filed by defendants.

The complaint in this proceeding, as amended, attacks the carload rates on horses and mules from Wichita, Kans., to points in Arkansas, Louisiana, and Texas; also to Memphis, Tenn., and points basing thereon, as unreasonable, and unduly prejudicial to the extent that they exceed for the same or comparable distances the rates from Kansas City and other points taking the Kansas City rates to the same destinations. It is also alleged that the through rates in some instances exceed the aggregates of intermediate rates contemporaneously in effect in violation of section 4 of the act. Violation of section 10 of the federal control act is also alleged. Reasonable and nonprejudicial rates are sought for the future and reparation on cer-

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tain shipments to North Fort Worth, Tex., and Texarkana, Tex.-Ark., made by complainants C. B. Team, Fred Wolf, and E. C. Team, copartners engaged at Wichita in buying and selling horses and mules under the firm name of C. B. Team Mule Company. Rates will be stated in amounts per car unless otherwise specified, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

From Wichita to points in Arkansas class-A rates apply, except to stations on the St. Louis-San Francisco and the Midland Valley, to which a distance scale applies. Complainants state that this scale compares favorably with the rates from Kansas City. To Louisiana points west of the Mississippi River the through rates are class A, while to points east of the river the rates are made either on the Kansas City or Memphis combination. If on Kansas City the combination is made up of the class-A rate to Kansas City and a commodity rate beyond. To Memphis commodity rates are published. From Kansas City commodity rates are in effect to Arkansas, Louisiana, and to Memphis. To Texas the testimony was confined to the so-called Fort Worth-Dallas group and common-point territory to which class-A rates apply from both Kansas City and Wichita.

Prior to November 1, 1916, rates on horses and mules, in carloads, from Wichita were on the class-C basis and the increase to the class-A basis, according to complainants, increased the rates approximately 50 per cent.

Complainants show instances in which the through rates from Wichita exceed the combination of rates to and from Kansas City. For example, the rate to Alexandria, La., is \$200.10. The rate from Wichita to Kansas City is \$40, and Kansas City to Alexandria \$95, plus an advance of \$15 under general order No. 28, making a total of \$150, or \$50.10 less than the through rate; also from Wichita to Texarkana the through rate exceeds the Kansas City combination by \$49, and the combination on Fort Smith, Ark., by \$54.50. To Memphis the through rate is \$114, while the combination on Bridge Junction is \$109.50. To points in eastern Texas it is asserted that nearly every through rate from Wichita is in excess of the aggregate of the intermediate rates. Thus, to North Fort Worth the through rate is 90 cents per 100 pounds, minimum 23,000 pounds, or \$207 per car, while the combination on Thackerville, Okla., is \$124.55, or \$82.45 less than the through rate.

The following table shows the present rates from Wichita and Kansas City to various points which are representative of the destination territory involved:

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To—	From Wichita.			From Kansas City.		
	Dis- tances.	Rates per car of 36 ft. 6 in.	Earnings per car- mle.	Dis- tances.	Rates per car of 36 ft. 6 in.	Earnings per car- mle.
	<i>Miles.</i>		<i>Cents.</i>	<i>Miles.</i>		<i>Cents.</i>
Little Rock, Ark.....	481	\$114.00	23.7	492	\$98.00	17.9
Pine Bluff, Ark.....	523	173.65	33.2	536	88.00	16.4
Helena, Ark.....	555	129.00	23.2	523	85.00	16.3
Shreveport, La.....	537	200.10	37.3	560	96.00	16.9
Alexandria, La.....	660	200.10	30.3	683	110.00	16.1
Lake Charles, La.....	718	207.00	28.8	741	114.00	15.4
Texarkana, Tex.-Ark.....	465	184.00	39.6	488	96.00	19.5
Beaumont, Tex.....	743	227.70	30.6	766	114.00	14.9
Memphis, Tenn.....	549	108.50	19.9	484	81.00	16.7

In further comparison complainants referred to rates on horses and mules from St. Louis and Kansas City to points in Kansas, Missouri, Arkansas, Louisiana, Oklahoma, and New Mexico, and also the scale prescribed in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, 351, known as the *Shreveport Case*, as well as distance scale rates applying within the above states, approximately 300 rates in all. In order that comparisons may be made with the Wichita rates in the preceding table, rates for similar distances are selected and set out in the following:

	Dis- tances.	Rates per car of 36 ft. 6 in.
	<i>Miles.</i>	
Kansas City, Mo., to Spearville, Kans.....	328	\$98.75
St. Louis, Mo., to Avoca, Ark.....	327	84.00
Shreveport scale ¹	325	78.20
Kansas City, Mo., to Waurika, Okla.....	478	105.06
St. Louis, Mo., to Camden, Ark.....	477	95.00
Shreveport scale ¹	475	92.00
Kansas City, Mo., to Terral, Okla.....	467	106.35
Kansas City, Mo., to Myrtis, La.....	523	95.00
St. Louis, Mo., to Urania, La.....	553	108.00
Shreveport scale ¹	550	96.48
Kansas City, Mo., to Maxwell, N. Mex.....	673	97.50
St. Louis, Mo., to Foley, La.....	660	114.00
Kansas City, Mo., to Optimo, N. Mex.....	723	97.50
Kansas City, Mo., to Mauriceville, Tex.....	760	114.00
Shreveport scale ¹	750	109.25

¹ Published in cents per 100 pounds, minimum 23,000 pounds for cars 46 feet 7 inches in length or less, single-line application.

On this showing complainants contend that the rates under attack are out of line with other rates in the same general territory. They insist that transportation conditions generally in this southwestern territory do not warrant the existing differences between rates from Wichita and those from Kansas City and refer to *Memphis-Southwestern Investigation*, 55 I. C. C., 515, wherein we said, at page 523:

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The conclusion is difficult to escape that the differences in transportation conditions generally are not sufficiently marked to necessitate or to warrant different levels of class rates in the general region here involved.

The St. Louis-San Francisco is the direct line to Memphis from both Wichita and Kansas City. The lines of this carrier converge at Springfield, Mo., and the movements thence to Memphis are over the same rails. The rates on horses and mules from both Wichita and Kansas City to Springfield are the same. Springfield being less than one-half the distance to Memphis complainants contend a difference of \$28.50 per car in favor of Kansas City is unjustifiable.

While not contending that any fixed relationship should be maintained between rates on various kinds of live stock, it is argued that the circumstances and conditions surrounding the transportation are so nearly identical that the rates on cattle should be taken into consideration in reviewing rates on horses and mules. In elaborate exhibits complainants show the percentage that horse and mule rates bear to cattle and hog rates between many points in the southwest, the average being approximately 102 per cent of the cattle and hog rates. Between Wichita and points in Arkansas, Texas, and Louisiana west of the Mississippi River there are effective distance scales of rates on cattle and hogs in which practically every carrier operating in those states participates.

Complainants contend that rates from Wichita to the destination territory should be on the level of northbound cattle rates to Wichita. This would result in a scale of rates from Wichita approximately the same as from Kansas City.

Defendants state that the movement of cattle northbound is in trainloads, whereas the movement of horses and mules southbound is only in carload lots; that horses and mules are more susceptible to damage by scratches and blemishes incurred during transportation than are cattle; and further, that if any relationship should prevail between the horse and mule rates and the cattle rates, the former should not be less than 125 per cent of the latter.

It was testified on behalf of complainants C. B. Team Mule Company that their most severe competition comes from Kansas City and St. Joseph, Mo.; that inasmuch as Kansas City sells in the same territory as does Wichita, considerable difficulty is experienced in marketing horses and mules against the disadvantage in rates. The general manager of the Wichita Union Stock Yards testified that owing to the inequality of rates it had been difficult to persuade horse and mule dealers to locate at that point and that horse and mule buyers sought other markets where rates were more favorable, and as a result Wichita does not get the percentage of the business to which its location entitles it.

Regarding competition at Memphis, complainants refer to *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, which also dealt with rates on live stock. We there said, at page 666, with reference to fresh meats and packing-house products:

Wichita comes into sharp competition with Kansas City in both the southeast and the Carolinas. The rate from Kansas City to Memphis is the same as from Wichita and carriers serving Kansas City through that gateway decline to advance the present rate. This situation was not called to the attention of the Commission upon the original hearing, but is now strongly urged as a reason why carriers from Wichita ought not to be required to advance their rates from that producing center.

The Commission is of the opinion that under all the circumstances this position is well taken. The rate from Wichita to this territory ought not to be advanced unless that from Kansas City is also increased by a corresponding amount, which can not, apparently, be done.

Complainants point out that class and commodity rates, other than on horses and mules, are the same in amount from both Wichita and Kansas City to points in Louisiana west of the Mississippi River.

Defendants insist that a very low basis of rates prevails on horses and mules in the territory here concerned; that this is due in part to the necessity of maintaining rates from markets which do not too greatly exceed the rates from St. Louis, the largest horse and mule market in the country. Other conditions which have been influential in depressing the horse and mule rates are outlined in *Rates on Horses and Mules from Kansas*, 26 I. C. C., 47, to which defendants refer, but need not be repeated here.

Rates were also cited from horse and mule markets such as Fort Scott, Kans., Springfield and St. Louis, Mo., and Fort Worth, Tex., to destinations in the southwest and central territory in comparison with those from Wichita to Memphis, New Orleans, Baton Rouge, and Little Rock. Selected items are as follows:

From—	To—	Distance.	Rates per car.	Earnings per car-mile.
		Miles.		Cents.
Wichita, Kans.....	Memphis, Tenn.....	549	\$103.50	18.9
Do.....	New Orleans, La.....	844	164.00	19.4
Do.....	Baton Rouge, La.....	764	164.00	21.6
Do.....	Little Rock, Ark.....	481	114.00	26.7
St. Louis, Mo.....	Columbus, Ohio.....	431	146.80	33.4
Do.....	Parkersburg, W. Va.....	533	152.90	28.7
Fort Scott, Kans.....	Memphis, Tenn.....	386	81.00	21
Springfield, Mo.....	do.....	283	75.50	26.7
Fort Worth, Tex.....	Kansas City, Mo.....	507	142.00	28.1
Do.....	Little Rock, Ark.....	392	124.20	31.7

The fact that the through rate from Wichita to Fort Worth exceeded and exceeds the combination of intermediate rates defendants attribute to the large groups of origin and destination. On traffic

to the Fort Worth-Dallas group and to Texas common-point territory Wichita is situated in the lower portion of a large blanket known as the Kansas City group. Fort Worth is located in the northern portion of the Fort Worth-Dallas group. It is contended that the scale of rates applying from Kansas into Oklahoma is on a very low basis. The distance rate from Wichita to Thackerville, Okla., 299 miles, is \$71. This is compared with the Oklahoma scale for the same distance, of \$95.60, and the Texas scale, of \$74.75. It is pointed out that the Texas-Oklahoma scale advances in approaching the 300-mile point at grades of \$1.50 for each 25 miles. Between 300 and 325 miles the advance is \$6.50, showing that Thackerville is at the peak of the low graduations.

Horses and mules shipped from Wichita to Memphis are stopped for feed and rest at Springfield, where the cars are switched out of the trains to the stockyards and there held until the morning of the next day. The expense of this service to defendants is estimated at \$7.50 per car. On traffic from Kansas City to Memphis no such stops are necessary because of the through service. Another condition which, defendants urge, justifies higher rates from Wichita to Memphis than from Kansas City is the relative volume of traffic. It is shown that for the year 1918 between Wichita and Springfield the traffic density via the St. Louis-San Francisco was 840,000 tons eastbound and 560,000 tons westbound. In 1919, 8,840,000 tons were handled eastbound and 2,400,000 tons westbound. Between Kansas City and Springfield during 1918, 1,620,000 tons moved eastbound and 800,000 tons westbound. During 1919 the figures show 4,366,000 tons eastbound and 2,450,000 tons westbound. The improvement in tonnage on the Wichita-Springfield line is attributed to the oil development in southern Kansas, a condition which, defendants say, is not permanent.

In explanation of the parity of rates to Springfield defendants assert that from time to time commodity rates on the Kansas City basis have been established from Wichita on such articles as furniture, crackers, candy, and articles manufactured either at Springfield or Wichita to permit one point to ship to the other, which practice has ultimately developed to the stage where the class and various commodity rates are now the same from Wichita as from Kansas City to Springfield.

We find that the rates assailed were and are not unreasonable except as hereinafter indicated, but as to points in Arkansas, Louisiana, and in that part of Texas embraced within what is known as the Fort Worth-Dallas group and Texas common-point territory, they are, and for the future will be, unduly prejudicial to the extent that

they exceed or may exceed the rates contemporaneously in effect on like traffic from Kansas City to the same destinations.

Notwithstanding the fact that class rates and numerous commodity rates, including those on horses and mules, to Springfield are the same from both Wichita and Kansas City, it is believed that the difference of 65 miles in the respective distances to Memphis justifies a moderate difference in rates on horses and mules to that point. There are substantial differences in rates on some other commodities. The present rate of \$81 on horses and mules from Kansas City yields 16.7 cents per car-mile for a standard car of 36 feet 6 inches in length, with rates for larger cars in proportion. On this basis of earnings the rate from Wichita would be \$91.68 for 549 miles, whereas the present rate is \$109.50. We therefore further find that the rate on horses and mules, in carloads, from Wichita to Memphis is, and for the future will be, unduly prejudicial to the extent that it exceeds or may exceed the rate contemporaneously in force from Kansas City to Memphis by more than \$10 per standard car of 36 feet 6 inches with rates on larger cars proportionately computed, subject to the increases authorized in *Increased Rates, 1920, supra*.

As stated, the through rates from Wichita to Fort Worth and various other points in the destination territory exceeded and exceed the aggregates of intermediate rates contemporaneously in effect. We find that all such through rates are unlawful where unprotected by appropriate fourth section applications, and were, are, and for the future will be, unreasonable to the extent they exceeded, exceed, or may exceed the aggregates of intermediate rates subject to the interstate commerce act contemporaneously in effect.

We further find that complainants C. B. Team, Fred Wolf, and E. C. Team, copartners, trading under the firm name of C. B. Team Mule Company, made numerous carload shipments of horses and mules from Wichita to North Fort Worth within the statutory period as set out in Appendix A to the complaint, and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those that would have accrued on the basis of the rates herein found reasonable; and that they are entitled to reparation, with interest. The exact amount of reparation due can not be determined on this record, and these complainants should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

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No. 10311.¹

DOWNEY SHIP BUILDING CORPORATION

v.

STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY,
DIRECTOR GENERAL, AS AGENT, ET AL.

Submitted February 17, 1921. Decided March 1, 1921.

Defendants' failure to switch and spot cars at points within complainants' plant beyond the established interchange tracks or to make an allowance to complainants for performing that service with their own facilities not shown to have been unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

C. S. Belsterling and Charles MacVeagh for complainants.*Montague Lessler* for intervener.*A. H. Elder* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner; exceptions were filed by complainants, and oral argument has been had.

Complainants are the Downey Ship Building Corporation, hereinafter referred to as the Downey corporation, engaged in building steel ships at Arlington, Staten Island, N. Y., and the Trustees in Liquidation of Milliken Brothers, Incorporated, hereinafter referred to as the Milliken corporation, which for some years prior to July, 1917, owned the Downey plant and operated it for the fabrication of structural steel. By complaints, filed October 31, 1918, in No. 10311 and November 29, 1918, in No. 10311 (Sub-No. 1), they allege that by reason of defendants' failure to perform the customary switching and spotting of cars within the plant, or to compensate them for performing that service with their own facilities they have been subjected to the payment of charges which were unreasonable, unjustly discriminatory, and unduly prejudicial. The Milliken corporation asks reparation on shipments which moved prior to July, 1917, and within the statutory period. The Downey corporation asks

¹ This report also embraces No. 10311 (Sub-No. 1), Trustees in Liquidation of Milliken Brothers, Incorporated, v. Same.

reparation on shipments moving since July, 1917, and that defendants be required to pay it a reasonable allowance for switching and spotting cars in the future.

The American Dock Company, engaged in warehousing and shipping miscellaneous commodities at Tompkinsville, Staten Island, N. Y., intervened to present its claims for the restoration of an allowance formerly paid by defendants, but that matter is not in issue and will not be considered.

The Downey corporation's plant, about 85 acres in extent, adjoins the Arlington yards of the Staten Island Rapid Transit Railway Company, hereinafter called the railway. Its equipment includes four shipways, numerous shops and material-storage yards, a power plant, etc., all linked together by about 4.5 miles of standard-gauge tracks. It also has 2 locomotives and 10 flat cars which, it is stated, are in constant use. About 50 per cent of the locomotive service is attributable to intraplant work, and the remainder to the switching and spotting service for which an allowance is claimed. The plant's inbound shipments averaged at the time of the hearing about seven carloads per day, 70 per cent of them steel for shipbuilding, the greater part of the remainder, coal and lumber. It appears that there has been no outbound rail movement since the Downey corporation has operated the plant. When the plant was operated by the Milliken corporation its traffic averaged about 200 carloads inbound per month, principally structural-steel shapes and an equal number outbound, principally fabricated steel for bridges and buildings. During that period about 70 per cent of the locomotive service was attributable to intraplant work and the remainder to switching and spotting.

The service performed by complainants for which they ask an allowance consisted and consists of switching inbound and outbound cars between the interchange tracks and unloading or loading points within the plant. This switching is performed by the plant locomotives and crews for distances ranging perhaps from 3,000 to 4,500 feet. The interchange tracks, two in number and about 1,000 feet long, are approximately equally divided by the boundary line between the railway and the plant. One of the tracks is used exclusively for the delivery of inbound shipments, the other for the placement of returned empty cars. Outbound cars were and are interchanged with the railway on that portion of the interchange track lying within the plant. The evidence is conflicting as to whether prior to early in 1919 inbound shipments were as a general rule delivered by the carrier on that portion of the interchange track within the plant or on the carrier's property adjoining. Since that time it has been the uniform practice to interchange shipments within the

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plant boundaries. No evidence was submitted concerning the cost of the service performed by complainants, but apparently neither the extent of the service nor its cost would be measurably increased by the interchange of inbound shipments just outside the plant boundary instead of within.

The contract under which the Milliken corporation in 1902 purchased the plant site from the railway provided that, if requested so to do, the railway would construct at the expense of the plant the necessary tracks and switches, and would furnish without charge "engines and crews for delivering freight cars to and from the works and docks." However, the Milliken corporation constructed the plant tracks, and complainants have always performed the switching and spotting with their own locomotives and crews. It was testified that in May, 1915, there were over 13 miles of track within the plant. Prior to the hearing neither complainant had demanded that the switching and spotting services other than that currently accorded be performed by defendants. A witness for the Milliken corporation admitted that when that corporation operated the plant it was more convenient for it to do its own spotting, because it had control over its own locomotives but had difficulty in controlling the locomotives of the railway. It was stated in behalf of the Downey corporation at the hearing that switching and spotting cars by defendants in lieu of an allowance would satisfy the complaint, and the railway expressed a willingness to perform this service. Defendants assert that complainants have never demanded switching and spotting service beyond the established interchange tracks, and that the plant tracks were in part unsuitable for use by the railway's locomotives; that complainants wish to weigh each car for their own convenience on a track scale located immediately beyond their interchange tracks; and that spotting by the railway would seriously interfere with the plant operations. It appears that it is, and during the period in question would have been, physically possible for the railway to operate its switching engines over the plant tracks to points where cars were and are placed, with the exception of the tracks on which coal is delivered at the boiler house. The Downey corporation weighs all shipments on the track scale in question before spotting them for unloading, and it was the practice of the Milliken corporation to weigh all inbound shipments and all outbound cars, whether loaded or empty. It does not appear that the weighing was or is done primarily for the convenience or purposes of defendants. It was testified for the Downey corporation that the switching and spotting of inbound cars by defendants would not materially hamper the operation of the plant as practically all materials are unloaded into stock piles and moved thence by cranes

or narrow-gauge cars as required. It is shown, however, that all of the tracks within the plant are frequently used by the plant locomotives and cars, and that all the plant tracks are indispensable to the efficient and economical operation of the plant.

The record shows that the greater part of the Downey corporation's shipments originate at points in eastern Pennsylvania from which rates to different points in the New York district, except to Trenton and Waverly, are the same. On traffic from the Pittsburgh district or west, the New York basis of rates applies to Arlington, as well as to other points in surrounding territory. It is asserted that the Milliken corporation sold its fabricated steel in the same general territory as its competitors, and was compelled to meet their prices by absorbing the additional cost to it of the interchange switching. The allegation of unreasonableness is predicated solely on the assumption that the rates include compensation to the defendants for the terminal service performed by complainants with their own facilities and at their own expense. It is alleged that defendants customarily switch and spot cars at other similarly situated industries in the New York district; and also that where such industries are accessible by water, defendants furnish free lighterage and unloading or reimburse the industries for performing these services with their own facilities, thereby unjustly discriminating against complainants and unduly preferring their competitors. Complainants also refer to terminal allowances or divisions accorded by various trunk lines in the New York district to two dock companies and to several short-line common carrier railroads.

So far as lighterage services or allowances are concerned it appears that they have been, and are, available to complainants upon the same terms as to any other industry in the New York district. The Milliken corporation having discontinued business in July, 1917, prior to federal control, it follows that its complaint must be considered in the light of the practices observed by the Staten Island and the Baltimore & Ohio roads, the only corporate defendants. At Washington, D. C., and at Baltimore, Md., the latter carrier spotted cars without additional charge for competing steel fabricating plants and the Staten Island Railway performed the same service on Staten Island for noncompeting industries, namely, certain dealers in lumber, plaster, and flour, and the Staten Island Ship Building Company. None of the industries mentioned had switching facilities of its own, and the service performed for such industries by these defendants was that of placing cars on, or removing them from, industrial spurs. There were and are but two industries on Staten Island other than complainants providing their own switching facilities.

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ities. One of them, the Procter & Gamble Company, has never received an allowance, although the railway has at times loaned it an engine with which to do its spotting. The other, the American Dock Company, prior to December 1, 1917, received certain allowances for various common carrier services performed by it for the Staten Island Railway, but nothing on its own traffic. It is conceded that as to the Milliken corporation defendants are not chargeable with unjust discrimination or undue prejudice by reason of the fact shown of record that other carriers paid allowances to certain industries at Trenton and elsewhere in New Jersey.

The foregoing evidence in behalf of the Milliken corporation is also pertinent to the complaint of the Downey corporation, which complainant further shows that in the New York district federally controlled lines other than the corporate defendants furnish free switching and spotting service to industries at Dunellen, New Market, and Newark, N. J., and pay allowances for switching and spotting to the American Bridge Company at Trenton and to the Carnegie Steel Company at Waverly, N. J., all of which are engaged in fabricating structural steel; and that they also furnish free switching and spotting service to a steel shipbuilding plant at Elizabeth, N. J. The allowance to the American Bridge Company has been paid only since February 1, 1918, and to the Carnegie Steel Company since June 1, 1917. It applies on shipments of all commodities except coal. The plants described at which the carriers switch and spot cars free are served by what may fairly be termed industrial spur tracks. In support of its allegation that it has been and now is in keen and active competition with the various fabricating structural-steel plants the Downey corporation submitted an exhibit which shows that out of 53 contracts for material for buildings, towers, etc., on which it submitted bids on and subsequent to June 20, 1919, it was the successful bidder on only two of the smallest contracts. From the facts of record it appears that the failure of complainant to secure these contracts can hardly be attributed to the fact that it bore the expense of its spotting. It was testified that under the conditions prevailing during the war there was little competition between shipbuilders, all of them having been able to obtain as much business as they were equipped to handle.

Certain recent cases cited by complainants, *Sharon Steel Hoop Co. v. P. Co.*, 51 I. C. C., 545; *Stewart Iron Co. v. P. Co.*, 47 I. C. C., 512; and *National Malleable Castings Co. v. P. & L. E. R. R. Co.*, 51 I. C. C., 537, in which we required the line-haul carriers to pay the complainant industries an allowance for doing their own spotting, presented a different state of facts. In those cases the carriers had previously made allowance to the industries and had failed to

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justify the increase in rates resulting from their cancellation, the service accorded to competing industries in the same city or locality including the spotting of cars within their plants, and the interchange tracks being located on the carriers' premises.

Whatever transportation service or facility the law requires the carriers to supply they have the right to furnish, and it does not follow, therefore, even where the line-haul or terminal-delivery rate covers the movement of cars incident to the receipt and delivery of carload freight on industry spurs, or on the interior tracks of industrial plants, that the owner of the property transported may in every case receive an allowance from the carriers when he elects to perform that service. *Car Spotting Charges*, 34 I. C. C., 609. While, as stated, the evidence as to the exact point of interchange for inbound shipments is conflicting, the record shows that cars interchanged with the industry have been received and delivered by defendants upon tracks either designated specifically by the controlling industry or by long usage established or acquiesced in as the proper and agreed interchange point.

We find that the defendants' failure to perform the switching and spotting service in question or to make an allowance to complainants for performing that service with their own facilities is not shown to have been or to be unreasonable, unjustly discriminatory, or unduly prejudicial. We shall assume that for the future, upon request, and without an order, the carrier defendant will promptly make good its proffer to spot cars within the plant, such spotting to involve only one placement of a car and the movement to be made without interference and over the trackage suitable for the service. The complaints will be dismissed.

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No. 11363.

MERIDIAN TRAFFIC BUREAU ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA & VICKSBURG RAILWAY COMPANY, ET AL.

Submitted November 1, 1920. Decided February 26, 1921.

Rates on imported blackstrap molasses, in tank-car loads, from New Orleans, La., Mobile, Ala., and Gulfport, Miss., to Meridian, Miss., found not unreasonable. Complaint dismissed.

C. W. Hayward for complainant.

Charles J. Rixey, jr., and *D. Lynch Younger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Meridian Traffic Bureau, a voluntary association of shippers, and two of its members, Sturges Company, a corporation, and J. M. Wilson, an individual trading under the name of Meridian Grain & Elevator Company, manufacturers of feed. By complaint filed April 5, 1920, they allege that the rates charged by defendants since February 25, 1920, on imported blackstrap molasses, hereinafter called blackstrap, shipped from New Orleans, La., Mobile, Ala., and Gulfport, Miss., to Meridian, Miss., were unjust and unreasonable. We are asked to restore the former import rates and to award reparation. Rates will be stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

During most of the period between June 25, 1918, and February 25, 1920, the commodity rates on imported blackstrap in tank-car loads from New Orleans, Mobile, and Gulfport to Meridian were:

Conditional (agreed value 8 cents or less per gallon) 11.5 cents.

Unconditional (agreed value over 8 cents per gallon, or value not declared) 14 cents.

On February 25, 1920, import rates on blackstrap from Gulf and south Atlantic ports to points on and east of the Mississippi River and south of the Ohio River were canceled, leaving domestic rates 60 I. C. C.

to apply. The domestic commodity rates from New Orleans, Mobile, and Gulfport to Meridian, which thus became applicable on import traffic, were: Conditional, 15 cents; unconditional, 17.5 cents. The publication of these rates based on value was authorized by us but there is no specific reference in the tariff to our order, as required by section 20 of the act. If defendants desire to continue these rates the tariff should be corrected. The shipments were billed at a value not in excess of 8 cents per gallon and the 15-cent rate was applied.

Complainants compared the rates assailed with rates on the same commodity from the same points to Ohio and Mississippi River crossings and with rates on imported fertilizer material, petroleum and its products, cottonseed meal and hulls, and other commodities from New Orleans and Mobile to various points.

Defendants contend that the blackstrap rates to the river crossings referred to by complainants are abnormally low because of water competition. As supporting the view that no good reason exists for according lower rates on blackstrap than on other grades of molasses they cited *Molasses Rates to Knoxville, Tenn.*, 30 I. C. C., 613, and *Rates on Blackstrap Molasses*, 32 I. C. C., 176. They pointed out that the rates assailed are lower than the molasses rates to Meridian, which are, from New Orleans, 26.5 cents, and from Mobile, 22.5 cents. They also compared blackstrap rates from New Orleans to Meridian with molasses rates in southeastern territory and with rates on asphalt, silicate of soda, and other commodities moving in tank cars between the points here considered and urge that of the rates referred to by complainants those on fertilizer material and cottonseed meal and hulls are on a very low basis, and those on petroleum, being to Gulf and river points, are depressed by water competition.

We find that the rates assailed were not and are not unreasonable. An order dismissing the complaint will be entered.

60 I. C. C.

No. 11861.

FLORIDA RATES, FARES, AND CHARGES.

IN THE MATTER OF INTRASTATE RATES, FARES, AND CHARGES OF THE ATLANTIC COAST LINE RAILROAD COMPANY AND OTHER CARRIERS IN THE STATE OF FLORIDA.

Submitted February 5, 1921. Decided March 8, 1921.

Certain rates and charges prescribed by the Railroad Commissioners of the State of Florida, and charged by several steam railroads for intrastate transportation in Florida, found to result in undue prejudice to shippers of interstate traffic, in undue preference of shippers of intrastate traffic, and in unjust discrimination against interstate commerce.

Thomas W. Davis, W. N. McGehee, and Frank W. Gwathmey for the steam carriers.

Charles E. Cotterill for International Agricultural Corporation, Swift & Company, American Cyanamid Company, Phosphate Mining Company, Coronet Phosphate Company, and Charleston Mining & Manufacturing Company.

James E. Calkins for Railroad Commissioners of the State of Florida.

REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

This case involves certain intrastate freight rates and charges of steam railroads in Florida, which are alleged to be unlawful in their relation to the interstate rates and charges of the same carriers. Passenger fares are referred to in the above title and in the order instituting the investigation, but it developed at the hearing that no question was presented with respect to them.

In *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to as *Ex Parte 74*, decided July 29, 1920, this Commission, under authority conferred upon it by the interstate commerce act, divided the country into four rate groups, namely, eastern, southern, western, and mountain-Pacific. These groups, in our view, represented a proper division of the country for the purposes of considering the financial condition of the carriers and fixing upon a general increase in rates. In the southern group, which includes the state of Florida, the increase allowed

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in charges for freight services was 25 per cent. It was our conclusion that this, together with other increases permitted, would result in transportation charges "not unreasonable in the aggregate under section 1 of the act and would enable the carriers in the respective groups under honest, efficient, and economical management and reasonable expenditures for maintenance of way, structures, and equipment to earn an aggregate annual railway operating income equal, as nearly as may be, to a return of 5½ per cent upon the aggregate value, for the purposes of this proceeding, of the railway property of such carriers held for and used in the service of transportation and one-half of 1 per cent in addition." In reaching this conclusion we anticipated that the various state authorities would authorize corresponding increases, as most of them have since done.

Tariffs were filed establishing the new rates, fares, and charges, interstate, effective in most instances August 26, 1920. By authority of the Railroad Commissioners of the State of Florida, contained in an order dated August 18, 1920, the intrastate rates, fares, and charges were increased at or about the same time in amounts corresponding to those authorized by us for interstate traffic. The Florida commissioners' order was in two sections. Section 1 provided in substance that the intrastate rates, fares, and charges, increased as above stated, should continue in effect until October 1, 1920, but not on or after that date in cases where section 2 of the order provided otherwise. Section 2 directed the carriers to maintain, on and after October 1, rates for freight services on the basis of the rates in force on June 24, 1918, immediately prior to the effective date of general order No. 28 of the Director General of Railroads, plus 25 per cent, plus a second 25 per cent. Most of the intrastate rates established under section 1 of the order conformed to the requirements of section 2, but rates, principally on heavy low-grade commodities, which under general order No. 28 were increased by stated amounts in cents per 100 pounds instead of 25 per cent, were in some instances to be substantially reduced and in others substantially increased. Under general order No. 28 the short-haul rates on these commodities had been subjected to much more than a 25 per cent increase, and the long-haul rates to less than a 25 per cent increase, and the main purpose of the Florida commissioners' order was to distribute the increases evenly and limit all rates to an increase of 25 per cent before applying the second 25 per cent. Among the commodities thus affected are brick, cement, plaster, lime, sand, gravel, rough stone, petroleum and its products, and cotton.

It is testified that the further effect of section 2 of the Florida commissioners' order is to require the cancellation of the minimum charge of \$15 per car, applicable to carload shipments in other than

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switching movements; also the minimum charge on less-than-carload shipments and the minimum class-rate scale established under general order No. 28; also to render inapplicable the standard uniform packing specifications for fruits and vegetables established by the Director General, and thus reinstate such requirements as were in force prior to federal control; and to nullify other measures, said to be of a constructive character, inaugurated by the Director General, as it restores the Florida commissioners' freight classification as in effect June 24, 1918. In short, it appears that, except for the 25 per cent increase, all changes made by the Director General in rates, charges, rules, regulations, and classification ratings are abrogated.

After the order of the Florida commissioners was promulgated the steam railroads of the state filed with us a petition, alleging that the action of the Florida commissioners would result in undue prejudice to shippers and localities outside the state and in unjust discrimination against interstate commerce, and we thereupon instituted this proceeding of investigation in accordance with the provisions of section 13 of the interstate commerce act for the purpose of determining what rates and charges, if any, or what maximum or minimum, or maximum and minimum, should be prescribed to be charged by the respondent carriers in order to remove such undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate commerce on the other hand, or such undue, unreasonable, or unjust discrimination against interstate commerce, as might be found to be caused by the rates and charges made or imposed by the authority of the state of Florida.

It is testified that the following carriers have complied with the Florida commissioners' order: Apalachicola Northern Railroad Company; Birmingham, Columbus & St. Andrews Railroad Company and A. D. Campbell, receiver; Charlotte Harbor & Northern Railway Company; Fellsmere Railroad; Florida East Coast Railway Company; Gulf Coast Railway; Live Oak, Perry & Gulf Railroad Company; Ocklawaha Valley Railroad Company and H. S. Cummings, receiver; Ocala & Southwestern Railroad Company; Tavares & Gulf Railroad; Georgia & Florida Railway and W. R. Sullivan, John F. Lewis, and L. M. Williams, receivers; and South Georgia Railway Company. The other Florida steam carriers, or at least most of them, have failed to comply with section 2, and are still maintaining intrastate rates and charges bearing increases corresponding to those applied interstate under Ex Parte 74. These carriers say that they found it impossible to comply with section 2 of the order by October 1 and finally decided to resist it. The Florida commissioners accordingly instituted mandamus proceedings in the

supreme court of Florida to compel compliance, but so far as we are advised the case has not been disposed of. Relying upon a decision of the supreme court of Florida in *Florida East Coast Ry. Co. v. State*, 83 So. Rep., 708, the carriers in default take the position that they have a right to test the propriety of the state commissioners' order before complying with it. Whatever the merits of that question may be, a state of facts is before us in the instant case, with which we should deal.

Most of the rates in Florida on the commodities in question appear to be on a mileage basis. The scales are divided into 5 or 10 mile blocks, and the rates progress with distances. Generally a different rate is provided for each block, but in some instances, particularly for the longer hauls, a common rate applies to several blocks. We may note the effect of section 2 of the Florida commissioners' order on several of the scales:

Commodities.	Generally reductions for—
Brick and rough stone.....	390 miles and less.
Cement and plaster.....	70 miles and less.
Lime.....	30 miles and less.
Sand.....	120 miles and less.
Gravel.....	90 miles and less.
Gasoline and other refined oils.....	20 miles and less.
Cotton.....	All distances.

For greater distances than those shown there are increases in practically every rate. The information appears in more detail in appendixes 1 to 7 to this report. The rates shown are taken from the Florida commissioners' exhibits; the data submitted by the carriers do not fully or correctly portray the situation.

According to the record, the commodities named constituted, in 1919, the following percentages of the intrastate traffic of the principal Florida carriers:

	Cotton.	Cement, brick, and lime.	Stone, sand, and similar commodities.	Gasoline and other refined oils.
	Per cent.	Per cent.	Per cent.	Per cent.
Atlantic Coast Line R. R.....	0.06	2.29	8.3	8.83
Florida East Coast Ry.....		4.6	88.9	7.1
Seaboard Air Line Ry.....	.1	2.4	3	8.3
Georgia Southern & Florida Ry.....	.2	2.8	1.2	1.2

Some of these commodities move in slight volume, as will be seen from the above table, but most of them enter very largely into the commercial life of the state, and the movement is substantial.

Fuel oil, one of the commodities affected, moves from and to certain points in Florida on commodity rates made to meet peculiar

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conditions. There is a heavy movement from Tampa, Fla., to the phosphate beds in the Bone Valley district, about 50 to 60 miles distance. For about 16 years prior to the period of federal control the rate was 64.5 cents per ton. The evidence is that this was a very low rate established to assist the industry. As a result of the increases made under general order No. 28 and under section 1 of the Florida commissioners' recent order, the rate became \$1.875. The reduction required under section 2 of the order would result in a rate of \$1.01 per ton. Since the movement of this traffic is heavy the revenue loss would be considerable.

This proceeding relates primarily to the rates made or imposed by authority of the state of Florida but, as above shown, as a result of section 2 of the Florida commissioners' order the rates for application within that state initiated by the President through the Director General during the period of federal control are also involved in the consideration of this issue, and our jurisdiction extends to such rates. The carriers contend that the increases in cents per 100 pounds made by the Director General were not unreasonable. It is said to have been the view of the Director General that short-haul traffic was not bearing its proper proportion of the transportation costs, and that therefore he concluded that the disproportionate increases on that traffic were justified. There is also evidence from the carriers to the effect that the Director General did not intend that the increases in cents per 100 pounds should approximate 25 per cent. One of the Director General's principal assistants in traffic work, who was familiar with the circumstances and conditions considered in connection with the preparation of general order No. 28, testified that the increases in cents per 100 pounds there provided for on heavy-moving commodities were determined before it was decided what percentage increase would be applied to rates in general.

To sustain the increases in cents per 100 pounds made by the Director General the carriers refer to *Virginia Iron, Coal & Coke Co. v. Director General*, 53 I. C. C., 583, wherein we found justified rates on iron ore from points in Tennessee, Georgia, North Carolina, and Virginia to Middlesboro, Ky., which had been subjected to flat increases of 30 cents per ton under general order No. 28, in addition to some increases made a short time previous. In general, the rates were for hauls of about 10 to 300 miles. The increases due solely to the addition of 30 cents per ton ranged from 136 per cent for the shorter hauls to 27 per cent for the longer hauls. The total increases ranged from 194 per cent to 43 per cent.

The minimum carload charge inaugurated by the Director General does not apply to most of the heavy and low-grade commodities, but
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does apply to practically all other carload traffic. Its cancellation effects reductions generally for hauls of 50 miles and less. The cancellation of the minimum class-rate scale and the minimum charge for less-than-carload shipments, established by the Director General, operates to reduce the charges for short hauls. The less-than-carload rates on ice would be materially reduced for considerable distances. Not a great amount of revenue is derived from these minimum rates and charges. Incidentally, it may be observed, they are substantially the same as apply to intrastate and interstate traffic everywhere else in the United States.

The record affords several specific examples of how shippers and localities outside the state are or would be directly and injuriously affected by section 2 of the order. Fuel oil moves in considerable quantity from Jacksonville to Jamieson, Fla., about 186 miles, where it is used in the manufacture of fuller's earth. A large plant for the manufacture of the same commodity was recently erected at Attapulgus, Ga., about the same distance from Jacksonville as is Jamieson. The same railroad serves both consuming points. The present rate on fuel oil from Jacksonville to both points is \$8.625 per ton, but under section 2 of the order the rate to Jamieson would be reduced 50 cents, affording the manufacturer at that point an advantage of about \$15 per car.

There is quite a heavy movement of brick in Florida. About 60 per cent of the traffic is intrastate, and the hauls are generally short. The reductions ordered by the Florida commissioners are therefore of considerable consequence. Producers outside the state compete with those within the state, and are threatened by the advantages afforded the latter by the Florida commissioners' order. For instance, brick is produced at Bainbridge, Ga., and Yeager, Fla. Under section 1 of the order, brick from Bainbridge to Jamieson, 19 miles, is charged \$18 per car, while that from Yeager to Jamieson, 10 miles, pays \$14.50 per car. Under section 2 of the order a shipment from Yeager would pay but \$7.82 per car.

There is a limited production of cotton in northern Florida. Besides a movement to ginning points in the state there is a movement to Jacksonville, which city has recently increased its facilities for handling the commodity and seeks to become a market of importance. North of Jacksonville are Savannah and Brunswick, Ga., to which ports the rates from Florida were increased 25 per cent under Ex Parte 74 without any subsequent reductions. There is great rivalry among the various ports and the carriers have heretofore maintained what they regarded as a proper alignment of rates, and for aught that appears it was satisfactory to the parties concerned therewith. So far as cotton is concerned the Georgia commission recently denied

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a 25 per cent increase, which held the rates from Georgia points to the ports of the state to the basis in effect during federal control. That matter coming before us, we have held that the intrastate rates should be increased in amounts corresponding to the increases made in interstate rates and now in effect under Ex Parte 74 to avoid undue prejudice and unjust discrimination against interstate commerce. *Georgia Rates, Fares, and Charges*, 60 I. C. C., 527. The carriers submit that there is no good reason for now favoring Jacksonville with lesser increases than the other ports.

The carriers contend that, due to the shape of Florida and the fact that most of the commodities in question are heavy and of low grade, the hauls are generally for the distances to which the rates reduced under section 2 of the Florida commissioners' order would apply; that the railroads are so located that the traffic does not move for the long distances between the western and southern portions of the state, but that from either section it moves more frequently across the state line into or out of Georgia or Alabama, thus becoming an interstate movement before any great distance is reached; and that the revenue loss required on the short hauls is not offset by the increases for long hauls. The Florida commissioners contend that the changes required, taking into consideration the increases as well as the reductions, will result in comparatively little, if any, loss in the carriers' revenue, and that the intrastate rates as a whole will not affect interstate commerce injuriously to any considerable extent.

Because of the magnitude of the undertaking respondents have not attempted to estimate in dollars and cents the loss of revenue which would result from a compliance with section 2 of the Florida commissioners' order. However, we do not regard as controlling the exact extent to which their revenues will be adversely affected. The fair conclusion from the whole record is that, taking the commodities in question as a whole, the increases granted by the Florida commissioners for the longer hauls will not produce revenue sufficient to equalize the reductions required on the shorter hauls, and we so find. In this connection it is significant that the rate expert of the Florida commissioners, in testifying at the hearing before the Florida commissioners on the carriers' applications for increases corresponding to those authorized by us in Ex Parte 74, the record of which hearing before the Florida commissioners has been made a part of this record, took the position that the specific advances as applied under general order No. 28 laid a heavy burden on short-haul traffic "or that traffic which in intrastate commerce constitutes the most of the business," and that the intrastate traffic was "necessarily short-haul traffic." Similar specific increases were made by the Director General in all other states on intrastate and interstate traffic and in our

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decisions in numerous cases and in *Ex Parte* 74 we have recognized their propriety in general.

In Florida we find no conditions which suggest the propriety of any lower basis of charges for short-haul traffic than is maintained elsewhere in the same general section of the country; in fact, the record shows that the Florida commissioners have in the past recognized that the transportation conditions in Florida justify a relatively higher level of rates in Florida than elsewhere in the south.

Section 2 of the Florida commissioners' order creates a rate structure intrastate materially different from that which applies interstate, resulting in injurious disparities, examples of which have hereinbefore been given, obviously also resulting in discrimination against intrastate shipments involving long hauls. As said in *Intrastate Rates within Illinois*, 60 I. C. C., 92, 102:

The rates to and from the various points on any given commodity, both state and interstate, local and joint, are closely related and interrelated, and the creation of material differences between them is subversive of established and sound economic and commercial conditions, resulting in a situation which could not reasonably be approved.

And, as we pointed out in *Nebraska Rates, Fares, and Charges*, 60 I. C. C., 305, 313, "differences in judgment among the several state commissions, if each could and would create a rate group of its own, would obviously nullify the fundamental purposes of the transportation act." The effect of the Florida commissioners' order is to treat Florida as separate and distinct from the other states in the southern group and to require a different scheme of rate making. A general compliance with that order would obviously result in a serious disruption of the rate structure in Florida and indirectly in other parts of the southern group.

The carriers' petition, alleging that unlawful disparities would result from a compliance with section 2 of the Florida commissioners' order, states that it is filed on behalf of certain named steam carriers and all other steam carriers subject to our jurisdiction operating in Florida, and our order instituting this investigation embraces all the carriers. However, the Florida East Coast Railway, which is one of the lines that complied with section 2 of the order, has never taken any active interest in the efforts of the other carriers toward the restoration or continued maintenance of the increased rates authorized by section 1, for the reason that it did not consider that it was substantially affected by the order of the Florida commissioners. Increases authorized by us for interstate traffic have been made by the Florida East Coast, but corresponding increases have not been made on intrastate traffic.

We are of opinion and find that the increases made by the carriers in rates and charges for freight services under our decision relating to the southern group in Ex Parte 74, and now in effect, taken in connection with the present interstate rules, regulations, and classification ratings, and including the minimum carload charge, the minimum less-than-carload charge, and the minimum class-rate scale, result in reasonable rates and charges for interstate transportation within said group, and that the failure of the respondent carriers by steam railroad within the state of Florida which complied with section 2 of the Florida commissioners' order to continue the maintenance of corresponding increases in their intrastate rates and charges, as represented by the rates and charges in effect September 30, 1920, which were 25 per cent higher than those in effect on the date of our decision in Ex Parte 74, has resulted and will result in unjust discrimination against interstate commerce and in undue prejudice to shippers of interstate traffic, and undue preference of shippers of intrastate traffic.

We further find that said unjust discrimination and undue prejudice and preference should be removed by making and maintaining increases in the intrastate rates and charges for freight services in force on the date of our decision in Ex Parte 74, without reducing the minimum carload charge, the minimum less-than-carload charge, and the minimum class-rate scale in effect on said date, which increases shall correspond to the increases heretofore made as aforesaid by said respondents under Ex Parte 74 and now in effect in their interstate rates and charges in the southern group.

The above findings are abundantly supported by the facts of record. They are without prejudice to the right of the authorities of the state of Florida, or of any other party in interest, to apply in the proper manner for a modification of our findings and order as to any specific intrastate rates or charges on the ground that they are not related to the interstate rates and charges in such a way as to contravene the provisions of the interstate commerce act.

Schedules giving effect to these findings may be made effective on not less than five days' notice.

An order will be entered at this time giving effect to our findings with respect to the rates and charges of the carriers which have complied with section 2 of the Florida commissioners' order. The record will be held open for such further action as may become necessary.

EASTMAN, Commissioner, dissents.

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APPENDIXES.

APPENDIX No. 1.

Brick and rough stone.

(Rates are stated in amounts per car, minimum 30,000 pounds.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
5 miles and under.....	\$12.50	\$6.25	280 miles and over 260.....	\$32.50	\$31.25
10 miles and over 5.....	14.00	7.51	290 miles and over 280.....	33.00	32.00
15 miles and over 10.....	16.50	10.62	300 miles and over 290.....	33.00	32.34
20 miles and over 15.....	16.50	10.62	310 miles and over 300.....	34.00	33.31
30 miles and over 20.....	17.00	11.50	320 miles and over 310.....	34.50	33.26
40 miles and over 30.....	18.00	13.13	330 miles and over 320.....	34.50	33.75
50 miles and over 40.....	19.00	14.38	340 miles and over 330.....	35.00	34.22
60 miles and over 50.....	20.00	15.62	350 miles and over 340.....	35.00	34.69
70 miles and over 60.....	20.50	16.09	360 miles and over 350.....	35.50	35.16
80 miles and over 70.....	21.50	17.43	370 miles and over 360.....	36.50	35.63
90 miles and over 80.....	22.50	18.59	380 miles and over 370.....	36.50	36.09
100 miles and over 90.....	23.00	19.84	390 miles and over 380.....	37.00	36.56
110 miles and over 100.....	24.00	20.31	400 miles and over 390.....	37.00	37.02
120 miles and over 110.....	25.00	21.56	410 miles and over 400.....	37.50	37.49
130 miles and over 120.....	25.50	22.81	420 miles and over 410.....	38.00	37.97
140 miles and over 130.....	26.50	23.28	430 miles and over 420.....	38.00	38.44
150 miles and over 140.....	27.00	24.54	440 miles and over 430.....	39.00	38.91
160 miles and over 150.....	28.00	25.79	450 miles and over 440.....	39.00	39.38
180 miles and over 160.....	29.50	27.34	460 miles and over 450.....	39.50	39.84
200 miles and over 180.....	30.00	28.13	470 miles and over 460.....	40.00	40.31
220 miles and over 200.....	30.50	28.91	480 miles and over 470.....	40.00	40.78
240 miles and over 220.....	31.50	29.69	490 miles and over 480.....	40.50	41.25
260 miles and over 240.....	32.00	30.47	500 miles and over 490.....	40.50	41.72

APPENDIX No. 2.

Cement and plaster.

(Rates are stated in amounts per ton.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
10 miles and under.....	\$1.50	\$1.18	210 miles and over 200.....	\$3.25	\$3.41
20 miles and over 10.....	1.625	1.41	220 miles and over 210.....	3.25	3.43
30 miles and over 20.....	1.875	1.65	230 miles and over 220.....	3.25	3.44
40 miles and over 30.....	2.00	1.88	240 miles and over 230.....	3.25	3.46
50 miles and over 40.....	2.125	2.03	250 miles and over 240.....	3.25	3.47
60 miles and over 50.....	2.25	2.19	260 miles and over 250.....	3.25	3.49
70 miles and over 60.....	2.375	2.35	270 miles and over 260.....	3.25	3.50
80 miles and over 70.....	2.50	2.50	280 miles and over 270.....	3.375	3.62
90 miles and over 80.....	2.625	2.66	290 miles and over 280.....	3.375	3.63
100 miles and over 90.....	2.75	2.74	300 miles and over 290.....	3.375	3.65
110 miles and over 100.....	2.75	2.82	310 miles and over 300.....	3.375	3.67
120 miles and over 110.....	2.875	2.90	320 miles and over 310.....	3.375	3.68
130 miles and over 120.....	2.875	2.97	330 miles and over 320.....	3.375	3.69
140 miles and over 130.....	3.00	3.06	340 miles and over 330.....	3.375	3.62
150 miles and over 140.....	3.00	3.13	350 miles and over 340.....	3.375	3.63
160 miles and over 150.....	3.125	3.21	360 miles and over 350.....	3.375	3.65
170 miles and over 160.....	3.125	3.28	370 miles and over 360.....	3.375	3.66
180 miles and over 170.....	3.25	3.37	380 miles and over 370.....	3.50	3.68
190 miles and over 180.....	3.25	3.38	390 miles and over 380.....	3.50	3.69
200 miles and over 190.....	3.25	3.40	400 miles and over 390.....	3.50	3.71

APPENDIX No. 3.

Lime.

(Rates are stated in amounts per ton.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
10 miles and under.....	\$1.375	\$1.18	210 miles and over 200.....	\$3.125	\$3.41
20 miles and over 10.....	1.50	1.41	220 miles and over 210.....	3.125	3.43
30 miles and over 20.....	1.75	1.65	230 miles and over 220.....	3.125	3.44
40 miles and over 30.....	1.875	1.88	240 miles and over 230.....	3.125	3.46
50 miles and over 40.....	2.00	2.08	250 miles and over 240.....	3.125	3.47
60 miles and over 50.....	2.125	2.19	260 miles and over 250.....	3.125	3.49
70 miles and over 60.....	2.25	2.35	270 miles and over 260.....	3.125	3.50
80 miles and over 70.....	2.375	2.50	280 miles and over 270.....	3.25	3.53
90 miles and over 80.....	2.50	2.66	290 miles and over 280.....	3.25	3.58
100 miles and over 90.....	2.625	2.74	300 miles and over 290.....	3.25	3.58
110 miles and over 100.....	2.625	2.83	310 miles and over 300.....	3.25	3.57
120 miles and over 110.....	2.75	2.90	320 miles and over 310.....	3.25	3.58
130 miles and over 120.....	2.75	2.97	330 miles and over 320.....	3.25	3.60
140 miles and over 130.....	2.875	3.05	340 miles and over 330.....	3.25	3.62
150 miles and over 140.....	2.875	3.13	350 miles and over 340.....	3.25	3.63
160 miles and over 150.....	3.00	3.21	360 miles and over 350.....	3.25	3.65
170 miles and over 160.....	3.00	3.28	370 miles and over 360.....	3.25	3.66
180 miles and over 170.....	3.125	3.37	380 miles and over 370.....	3.375	3.68
190 miles and over 180.....	3.125	3.38	390 miles and over 380.....	3.375	3.69
200 miles and over 190.....	3.125	3.40	400 miles and over 390.....	3.375	3.71

APPENDIX No. 4.

Sand.

(Rates are stated in amounts per car, minimum 36,000 pounds.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
5 miles and under.....	\$9.40	\$6.25	240 miles and over 220.....	\$28.00	\$29.00
10 miles and over 5.....	10.50	7.81	250 miles and over 240.....	29.00	30.47
20 miles and over 10.....	13.00	10.62	260 miles and over 260.....	29.50	31.25
30 miles and over 20.....	14.00	11.50	270 miles and over 280.....	30.00	32.08
40 miles and over 30.....	15.00	13.13	280 miles and over 290.....	30.50	32.34
50 miles and over 40.....	16.50	14.38	290 miles and over 300.....	30.50	32.81
60 miles and over 50.....	17.00	15.62	300 miles and over 310.....	31.50	33.25
70 miles and over 60.....	17.50	16.00	310 miles and over 320.....	31.50	33.75
80 miles and over 70.....	18.00	17.34	320 miles and over 330.....	32.00	34.22
90 miles and over 80.....	19.50	18.59	330 miles and over 340.....	32.50	34.69
100 miles and over 90.....	20.50	19.84	340 miles and over 350.....	32.50	35.15
110 miles and over 100.....	20.50	20.31	350 miles and over 360.....	33.00	35.68
120 miles and over 110.....	22.00	21.56	360 miles and over 370.....	33.00	36.09
130 miles and over 120.....	22.50	22.81	370 miles and over 380.....	34.00	36.56
140 miles and over 130.....	23.00	23.28	380 miles and over 390.....	34.50	37.03
150 miles and over 140.....	24.50	24.54	390 miles and over 400.....	34.50	37.50
160 miles and over 150.....	25.00	25.79	400 miles and over 410.....	35.00	37.97
170 miles and over 160.....	26.50	27.34	410 miles and over 420.....	35.00	38.44
180 miles and over 170.....	27.00	28.13	420 miles and over 430.....	35.50	38.91
190 miles and over 180.....	27.50	28.91	430 miles and over 440.....	36.50	39.38

APPENDIX No. 5.

Gravel.

(Rates are stated in amounts per car, minimum 30,000 pounds.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
5 miles and under.....	\$5.75	\$5.25	240 miles and over 230.....	\$27.50	\$29.00
10 miles and over 5.....	10.00	7.81	260 miles and over 240.....	28.00	30.47
20 miles and over 10.....	12.50	10.62	280 miles and over 260.....	29.00	31.25
30 miles and over 20.....	13.00	11.50	290 miles and over 280.....	29.50	32.08
40 miles and over 30.....	14.50	12.18	300 miles and over 290.....	29.50	32.34
50 miles and over 40.....	15.00	14.38	310 miles and over 300.....	30.50	32.51
60 miles and over 50.....	16.50	15.62	320 miles and over 310.....	30.50	32.28
70 miles and over 60.....	17.00	16.00	330 miles and over 320.....	30.50	32.75
80 miles and over 70.....	17.50	17.34	340 miles and over 330.....	31.50	34.22
90 miles and over 80.....	19.00	18.59	350 miles and over 340.....	31.50	34.09
100 miles and over 90.....	19.50	19.84	360 miles and over 350.....	32.00	35.16
110 miles and over 100.....	20.00	20.31	370 miles and over 360.....	32.50	35.08
120 miles and over 110.....	21.50	21.56	380 miles and over 370.....	32.50	35.09
130 miles and over 120.....	22.00	22.81	390 miles and over 380.....	33.00	36.56
140 miles and over 130.....	22.50	23.28	400 miles and over 390.....	33.00	37.08
150 miles and over 140.....	23.00	24.54	410 miles and over 400.....	34.00	37.50
160 miles and over 150.....	24.50	25.79	420 miles and over 410.....	34.50	37.97
180 miles and over 160.....	25.50	27.34	430 miles and over 420.....	34.50	38.44
200 miles and over 180.....	26.50	28.13	440 miles and over 430.....	35.00	38.91
220 miles and over 200.....	26.50	28.91	450 miles and over 440.....	35.00	39.38

APPENDIX No. 6.

Gasoline and other refined oils.

(Rates are stated in cents per 100 pounds.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
10 miles and under.....	22	21	210 miles and over 200.....	57	65
20 miles and over 10.....	24.5	24	220 miles and over 210.....	59.5	68
30 miles and over 20.....	28	28	230 miles and over 220.....	60.5	69
40 miles and over 30.....	29.5	30	240 miles and over 230.....	62	71
50 miles and over 40.....	30.5	32	250 miles and over 240.....	63	72
60 miles and over 50.....	34.5	37	260 miles and over 250.....	64.5	74
70 miles and over 60.....	35.5	38	270 miles and over 260.....	65.5	75
80 miles and over 70.....	37	40	280 miles and over 270.....	67	77
90 miles and over 80.....	38	41	290 miles and over 280.....	69.5	80
100 miles and over 90.....	40.5	44	300 miles and over 290.....	70.5	82
110 miles and over 100.....	43	47	310 miles and over 300.....	72	83
120 miles and over 110.....	44	49	320 miles and over 310.....	73	85
130 miles and over 120.....	45.5	50	330 miles and over 320.....	74.5	87
140 miles and over 130.....	47	52	340 miles and over 330.....	74.5	87
150 miles and over 140.....	49.5	55	350 miles and over 340.....	75.5	88
160 miles and over 150.....	50.5	57	360 miles and over 350.....	75.5	88
170 miles and over 160.....	52	58	370 miles and over 360.....	75.5	88
180 miles and over 170.....	53	60	380 miles and over 370.....	77	90
190 miles and over 180.....	54.5	62	390 miles and over 380.....	77	90
200 miles and over 190.....	55.5	63	400 miles and over 390.....	77	90

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APPENDIX No. 7.

Cotton.

(Rates are stated in cents per 100 pounds.)

Distances.	Under section 1.	Under section 2.	Distances.	Under section 1.	Under section 2.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
10 miles and under.....	32.5	18	200 miles and over 180.....	65	58
20 miles and over 10.....	35	21	220 miles and over 200.....	66.5	60
30 miles and over 20.....	37.5	24	240 miles and over 220.....	67.5	62
40 miles and over 30.....	40	27	260 miles and over 240.....	69	63
50 miles and over 40.....	42.5	30	280 miles and over 260.....	70	65
60 miles and over 50.....	45	33	300 miles and over 280.....	71.5	66
70 miles and over 60.....	47.5	37	320 miles and over 300.....	72.5	68
80 miles and over 70.....	50	40	340 miles and over 320.....	74	69
90 miles and over 80.....	52.5	43	360 miles and over 340.....	75	71
100 miles and over 90.....	55	46	380 miles and over 360.....	76.5	72
110 miles and over 100.....	56.5	47	400 miles and over 380.....	77.5	74
120 miles and over 110.....	57.5	49	420 miles and over 400.....	79	75
130 miles and over 120.....	59	50	440 miles and over 420.....	80	77
140 miles and over 130.....	60	52	460 miles and over 440.....	81.5	78
150 miles and over 140.....	61	53	480 miles and over 460.....	82.5	80
160 miles and over 150.....	62.5	55	500 miles and over 480.....	84	82
180 miles and over 160.....	64	57			

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No. 11020.

NATIONAL SPRING & WIRE COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, GRAND RAPIDS &
INDIANA RAILWAY COMPANY, ET AL.

Submitted October 14, 1920. Decided March 5, 1921.

Refusal of defendants to absorb, on interstate carload traffic to or from complainants' plants located on the tracks of the Michigan Railroad at Grand Rapids, Mich., the switching charges of that road, while contemporaneously absorbing one another's switching charges on like traffic to or from industries located on their tracks at that point under substantially similar circumstances and conditions, found to be unjustly discriminatory. Unjust discrimination ordered removed and reparation denied.

E. L. Ewing, C. E. Elerick, and Fayette B. Dow for complainants.
John C. Bills, Frank E. Robson, E. M. Davis, and W. K. Williams for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

McCHORD, *Commissioner*:

To the report proposed by the examiner and duly served upon the parties the defendants have filed exceptions, and the parties have been heard in oral argument.

The complainant corporations operate industrial plants located on the tracks of the Michigan Railroad Company at Grand Rapids, Mich. By complaint filed November 18, 1919, they allege that defendants refuse to absorb the Michigan Railroad Company's charge of \$5 per car for switching carload shipments between complainants' industries and the connection with the Pere Marquette Railway, although they absorb all other intermediate and originating or delivering lines' switching charges at Grand Rapids; and that this practice is unreasonable, unjustly discriminatory, and unduly prejudicial. The prayer is for an order requiring defendants to absorb the Michigan Railroad's switching charge, without unjust discrimination or undue prejudice, and for an award of reparation.

The Michigan Railroad Company is not a party to the case. It is an electric road operating about 145 miles of line in southwestern Michigan. It is organized under the general railroad laws of Michigan, has standard tracks and equipment, and is a party to the Ameri-

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can Railway Association per diem agreement. In addition to about 79 electrically equipped box cars, it owns 19 freight cars which can be exchanged with the steam roads and are so exchanged to some extent, principally in switching movements. Its interstate traffic is carried almost entirely in cars belonging to the steam roads. Its only direct connection at Grand Rapids is with the Pere Marquette Railway, and that carrier performs the intermediate switching between it and the tracks of the other defendants. For switching loaded cars between its connection with the Pere Marquette Railway and industries, private tracks, or sidings on its line the Michigan Railroad, under its tariff, charges \$5 per car.

On carload shipments on which they have a road haul defendants generally absorb the switching charges of connecting steam railroads at Grand Rapids, ranging from \$3 to \$11 per car, provided the road-haul revenue is not less than \$15 per car. They do not absorb the switching charge of the Michigan Railroad. Complainants are therefore compelled to pay the \$5 charge in addition to the Grand Rapids rates on all interstate carload traffic switched by the Michigan Railroad to and from its connection with the Pere Marquette Railway. While a violation of section 1 of the act is alleged, complainants' principal contention is that the nonabsorption of this switching charge subjects them to unjust discrimination under section 2 and undue prejudice under section 3.

Defendants' attitude is illustrated by the following extract from the testimony of the general freight agent of the Grand Rapids & Indiana Railroad:

But in a general way the absorption of switching and the switching charges are reciprocal in their nature, and where at one point the G. R. & I., for illustration, might have more terminals than some other line, some other line might have more terminals at some other point than the G. R. & I., so that in a general way this service which what you might call trunk lines perform for each other is a reciprocal service, and that in the end the exchange of money for that reciprocal service about evens up.

Now, we have felt it perhaps was hardly fair to say we ought to absorb the charges of a line that does not offer, or cannot offer, any reciprocal thing in return.

It is settled, however, that a reciprocal switching arrangement between certain carriers does not justify their refusal to absorb the switching charges of another carrier, notwithstanding the smaller volume of traffic of the latter, if in fact unjust discrimination or undue prejudice is shown to result. *Buffalo, Rochester & Pittsburgh Ry. v. Pennsylvania Co.*, 29 I. C. C., 114; *Pennsylvania Co. v. United States*, 236 U. S., 351; *Aurora, Elgin & Chicago R. R. Co. v. I. H. B. R. R. Co.*, 51 I. C. C., 331.

Defendants contend that unlawful discrimination can not be predicated upon a difference in transportation charges to persons not in

competition with each other, and that there is no proof of such competition in this case. Of the three complainants, the National Spring & Wire Company manufactures upholstery springs for automobile and furniture cushions. Its inbound shipments consist of wire, muslin, and cotton sheeting and its outbound shipments consist of its manufactured products. No competitor of this complainant is located at Grand Rapids. The Consumers Power Company furnishes light, heat, and power to industries at Grand Rapids, its only traffic being inbound coal. It has no competition. The Voight Milling Company manufactures flour and other mill products. Its inbound shipments consist of grain and a small amount of coal; its outbound shipments consist of flour and feed. Only about 8 or 10 per cent of its inbound shipments and 2 or 3 per cent of its outbound shipments are involved in this case. The remainder of its traffic moves under transit arrangements, in connection with which no switching charges at Grand Rapids are absorbed. This complainant competes with other mills at Grand Rapids.

Practically, therefore, the only traffic involved in the case which is affected by competition is the nontransit portion of the business of the Voight Milling Company. Even as to this traffic there is little of record showing any actual disadvantage to that complainant or advantage to its competitors by reason of the nonabsorption of the switching charge. But, while in a situation in which there is undue preference of one shipper and undue prejudice to another, in violation of section 3 of the act, competitive relations between the parties must generally appear, *Portsmouth Assn. of Commerce v. S. A. L. Ry. Co.*, 55 I. C. C., 377, not only is such a relationship between shippers not essential to a violation of section 2, but the existence of competition between carriers does not take an otherwise unlawful discrimination out of that section.

In *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455, it appeared that the Southern and the Seaboard Air Line railways absorbed one another's switching charges on their competitive traffic to and from industries on their rails at Richmond, Va., but declined to absorb the like charges of the Chesapeake & Ohio Railway on traffic to or from industries on the latter's rails at that point. While no competition between shippers was shown, we found the practice in question to be an unjust discrimination within the meaning of section 2 of the act, and in that connection said, pages 464-466:

Section 2 is primarily directed against discrimination between shippers located in the same community. It is aimed to put all shippers within a switching district upon a substantial equality. It provides that where a carrier receives from any person a greater compensation for any service rendered in the transportation of passengers or property than it receives from any other person for doing for him a "like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and

conditions, such common carriers shall be deemed guilty of unjust discrimination," a discrimination which is prohibited and declared to be unlawful. Under this section it is settled that the competition of rival carriers as such does not constitute substantially dissimilar circumstances to justify a difference in treatment. *Wight v. United States*, *supra* [167 U. S., 512]; *I. C. C. v. Alabama Midland Ry. Co.*, 168 U. S., 144, 146.

It is the line-haul movement which that section primarily contemplates. Where the short delivery service within the switching district is substantially the same in either instance, we are of the opinion that the line-haul carrier is receiving a greater compensation from one shipper than from another for a like service when it absorbs the switching charges of one switching line and not those of another.

We do not consider that the carriers must absorb the switching charges indiscriminately to all industries within the switching limits of Richmond if they choose to absorb the switching charges to any one industry off their rails. The illegality herein found to exist is the receiving of a greater compensation for one service than for a like service under substantially similar circumstances and conditions.

To illustrate the concluding statement it was observed that, as equality in absorptions contemplates similarity of services, it probably would be necessary to absorb but \$2 of a \$5 charge for a 5-mile switching movement as against a \$2 charge for a 2-mile movement.

Our order in that case, which the carriers concerned sought to enjoin, was sustained by the Supreme Court of the United States in *Seaboard Air Line Ry. Co. v. United States*, 254 U. S., 57, the court saying:

We are of opinion that the Commission was correct in regarding the service in question as a like and contemporary service rendered under substantially similar circumstances and conditions, and amply sustained as matter of law in *Wight v. United States*, 167 U. S. 512, and *Interstate Commerce Commission v. Alabama Midland Railway Company*, 168 U. S. 144. The principle established in these cases is that the statute aims to establish equality of rights among shippers for carriage under substantially similar circumstances and conditions, and that the exigencies of competition do not justify discrimination against shippers for substantially like services.

The practice here complained of equally falls within the inhibition of section 2. Complainants' industries are located near the center of the Grand Rapids switching district. The movement between those industries and the Pere Marquette Railway interchange track is less in extent, and the charge therefor is smaller in amount, than in many instances in which the other switching charges at Grand Rapids are absorbed by defendants. Aside from the fact that the Michigan Railroad is operated by electricity, there does not appear to be any substantial difference between the service performed by that carrier, for which complainants pay an extra charge of \$5 per car, and that performed by the steam railroads, for which the industries located

on those lines pay nothing above the line-haul rates. Subject to the stipulated minimum line-haul revenues and with some exceptions which need not be detailed here, switching movements of traffic generally are covered by such absorptions, the switching charge of the Michigan Railroad excepted. In other words, under the tariffs, for like and contemporaneous switching services on like kinds of traffic under substantially similar circumstances and conditions, absorptions are withheld in the one case and provided for in the others. Service for service, equal treatment is due complainants.

It is not established of record that the total transportation charges paid by complainants are in themselves unreasonable, but we find that the refusal or failure of the defendants to absorb, under their line-haul rates to or from Grand Rapids, the Michigan Railroad Company's charge for switching interstate carload traffic between that carrier's track connection with the Pere Marquette Railway at Grand Rapids and complainants' industries on the Michigan Railroad's line at that point, while absorbing, under the same line-haul rates, charges for the like and contemporaneous service of switching like kinds of traffic, under substantially similar circumstances and conditions, to or from industries on defendants' own lines at Grand Rapids, unjustly discriminates against complainants, in violation of section 2 of the act, and that this discrimination must be removed. The record contains no such proof of damage to complainants as would be necessary to support an award of reparation, and reparation is denied. In the circumstances the alleged violation of the third section of the act need not be further considered.

An appropriate order will be entered.

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No. 11446.

NORTHERN WEST VIRGINIA COAL OPERATORS'
ASSOCIATION

v.

PENNSYLVANIA RAILROAD COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted November 20, 1920. Decided March 3, 1921.

1. Practices of the Director General during the period from July 1, 1919, to March 1, 1920, in the distribution of coal cars to mines on the Monongahela Railway and the Morgantown & Wheeling Railway found to have been unduly prejudicial to operators of coal mines on those roads.
2. Case held open for further hearing as to the extent of the damages, if any, suffered by complainant's members as the result of the undue prejudice.

George T. Bell for complainant.

Royal McKenna for Director General of Railroads.

James Stillwell, John J. Heard, and Reed, Smith, Shaw & Bell for other defendants.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS CLARK, DANIELS, AITCHISON, AND POTTER.
DANIELS, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainant and the case was orally argued.

The complainant is an incorporated association whose members, hereinafter referred to as the operators, own and operate bituminous coal mines in northern West Virginia on the Monongahela Railway, hereinafter termed the Monongahela, and the Morgantown & Wheeling Railway, hereinafter termed the Wheeling. The operators sell and ship their coal to dealers and consumers at points served by or reached in connection with the Pennsylvania Railroad, hereinafter termed the Pennsylvania, and the Pittsburgh & Lake Erie Railroad, hereinafter termed the Lake Erie, and are in competition with coal operators on the lines of those railroads. The complaint, filed May 4, 1920, as amended, alleges in substance that the operators during a period of car shortage from July 1, 1919, to March 1, 1920, barring November, 1919, were not given their pro-

rata share of the cars available for loading as compared with operators of mines on the Pennsylvania and the Lake Erie; and that the acts and practices complained of were unreasonable, unjustly discriminatory, and unduly prejudicial in violation of the interstate commerce act and of the transportation act, 1920. It asks that we either (1) order the defendant carriers to "adjust and equalize" the alleged shortage or (2) award damages to the operators against the "agent acting for and in behalf of the President of the United States in winding up the affairs of federal control."

At the argument complainant withdrew the prayer that the Pennsylvania and the Lake Erie be ordered to equalize the shortage, leaving only the second prayer for consideration.

The Monongahela has its principal termini at Fairmont, W. Va., and Brownsville Junction, Pa. It has track connections with the Lake Erie, the Pennsylvania, and the Baltimore & Ohio railroads. Fifty per cent of its capital stock is owned by the Pennsylvania and 50 per cent by the Lake Erie, but it is separately operated under its own charter. The Wheeling, now in the hands of a receiver, is a short line, principally operated by electricity, extending from a point near Randall, W. Va., where it connects with the Monongahela, northwestward toward the West Virginia-Pennsylvania state line. It has a separate organization from the Monongahela. Both of these railroads were taken under federal control. The Wheeling was released from federal control shortly after the taking over and was not operated by the government during the period with which the complaint is concerned. The Monongahela remained under federal control until March 1, 1920. Neither of these railroads owns coal cars used in interstate commerce, and the mines on their lines are consequently dependent upon the equipment of other carriers. There are joint rates on coal from points on the Monongahela and the Wheeling to points reached by and in connection with the Pennsylvania and the Lake Erie.

During the period in question the available supply of coal cars throughout the country generally was not sufficient for the demand. This shortage existed likewise in the region where the operators' mines are situated. A witness for complainant testified that during this period orders for coal cars desired by the mines on the Monongahela and the Wheeling were placed by the Monongahela with the Pennsylvania and the Lake Erie in the same manner as were orders for cars desired by mines on the latter two roads. Complainant's exhibits show that from July 1, 1919, to March 1, 1920, barring November, 1919, mines on the Monongahela and the Wheeling received 110,450 cars, or 72.2 per cent of the

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total number of cars ordered; that bituminous operators on the Pennsylvania Lines—East received 731,693 cars, or 84.3 per cent, and on the Lake Erie 81,713 cars, or 78.8 per cent, of the total number of cars ordered; and that mines on the Monongahela division, the Southwest branch, and the Pittsburgh west end division of the Pennsylvania received 263,933 cars or 94.1 per cent of the cars ordered. The defendants do not dispute the substantial accuracy of these figures. The record indicates that the mines on the Monongahela and the Wheeling were rated in accordance with the car-service regulations of the United States Railroad Administration, and that the cars ordered did not exceed the rated capacities of the mines.

Complainant's exhibits contain copies of letters and telegrams exchanged between it and officials of the Pennsylvania, the Lake Erie, and the eastern car pool, which show that complainant made frequent and repeated efforts during the period covered by the complaint to obtain a better supply of cars for the operators. Notwithstanding these efforts, and the promises of the officials in response thereto, the mines on the Monongahela and the Wheeling, month by month, received a substantially smaller percentage of cars ordered than was received by mines on the Pennsylvania and, except for July and September, 1919, than was received by mines on the Lake Erie. Complainant predicates its contention of discrimination largely on the showing of the combined total of cars furnished by the Pennsylvania and the Lake Erie for the entire period involved.

Car service circular C-S 31 of the United States Railroad Administration, which became effective October 10, 1918, after providing a method of determining the productive capacity of mines, in part reads as follows:

Whenever the available car supply is such that all orders for cars can not be filled, each mine shall be given its pro rata share of cars (grouping of mines or pooling of cars not being permitted) in accordance with the following rules:

1. The daily rating, or the daily order for cars if less than the rating, shall be the basis for car distribution.

9. If a mine receives more or less cars than it is entitled to during any period * * * it will be charged with a surplus or credited with a shortage accordingly and the discrepancy adjusted as promptly as practicable.

Car service circular C-S 31 (revised), which was promulgated January 10, 1920, and superseded C-S 31, also carried these rules in substantially the above form. These circulars were not filed with us as tariffs or in connection with a tariff. Complainant contends that the provisions applied to the Wheeling as well as to the Monongahela, even though the former was not under federal control during the

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period in question. It appears that the Wheeling, along with the other three defendant carriers, was a party to and concurred in these rules.

The position of the Lake Erie is that there was no violation of any legal obligation toward the operators by the Director General in the matter of car supply either from the Pennsylvania or the Lake Erie, and that there is not even an allegation of a shortage of supply in connection with the operation of the Lake Erie; that, even admitting that the operators were not treated on an equality with mines on trunk lines, the determination of the question of car supply was a matter within the discretion of the operating officials of the Railroad Administration, who were at liberty to use their own judgment in regard thereto, provided only that they acted in good faith; and that complainant has not shown that prior to the transportation act, 1920, there was any obligation on the part of the railroads or of the Railroad Administration to give equal car supply to mines dependent on other lines. A witness for this defendant further testified that in his opinion the car distribution rules do not have any bearing on the duty of one railroad to supply empty equipment to another railroad, and that the provisions of these rules are confined to the railroad which issues them and obligate the issuing road to make equitable distribution of cars as between the coal mines on that railroad only; that during the time of the car shortage the Monongahela received from the rails of the Lake Erie as many cars as was consistent with equity; and that while the utmost was done to comply with orders of the car pool, the paramount thought in the minds of the officials operating the Lake Erie was equal distribution, not only to mines on its own line but to mines on so-called dependent lines, and equalization was attempted rather than strict compliance with orders of the pool.

As shown by complainant's exhibits, the cars supplied the Monongahela by the Lake Erie were 79.1 per cent of its orders as compared with 78.8 per cent furnished the mines on the Lake Erie. On the other hand, only 64.2 per cent of the cars ordered from the Pennsylvania were received from that road, while the deliveries of cars to mines on the Pennsylvania Lines-East, represented 84.3 per cent of those mines' orders, and mines on the Monongahela division, Southwest branch, and Pittsburgh west end division of that road received 94.1 per cent of their requirements.

The proper application of the car distribution rules as between the several defendant carriers does not appear to be controlling here. The question for us to determine is whether or not the law imposed a duty upon the defendant carriers, as agents of the Director Gen-

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eral, to accord substantially equal treatment to the mines on the so-called dependent roads and on the trunk lines in the same region or district, and if so, whether or not that duty was discharged.

The failure to supply the Monongahela, and through it the operators, a pro rata share of available equipment apparently was due in part to the lack of full recognition on the part of the officials of the trunk lines that federally controlled roads were under unified operation, including the common use of equipment. The Pennsylvania, as the testimony shows, frequently objected to furnishing equipment to the Monongahela because it was short in its interchange of cars with the Lake Erie through the Monongahela. This question was a constant source of dispute between these two defendants. Although the acts and practices of the Pennsylvania and the Lake Erie in the matter of car distribution are referred to frequently of record, the liability of these carriers is not involved in the narrowed issues of the case. They were operated by the Director General and the acts complained of were the acts of his agents.

Defendants comment upon the fact that in arriving at the percentage of cars furnished complainant has considered the Monongahela and the Wheeling as one railroad. We perceive no objection to this. It is immaterial in this connection that the Wheeling was not under federal control during the period of the complaint. For the purposes of car distribution the Wheeling was treated by the Monongahela merely as a mine served by it and was given a rating in the same way that other mines were rated. Orders for cars needed on the Wheeling were placed with the Monongahela, and by it with the trunk lines. The Wheeling was as much dependent upon the connections of the Monongahela for equipment as was the Monongahela itself, and its mines were entitled to the same treatment as the mines on the Monongahela.

It is not possible always for carriers to furnish particular mines their exact quota of cars during periods of car shortage, and if shortages or overages are adjusted with reasonable promptness a carrier may be said to have fulfilled its duty. But where, as in this case, a substantial discrepancy as between groups of mines in the same locality continues over a period of several months a presumption arises, which is rebuttable, of course, that the carrier has not met its duty under the law to treat all of its patrons on a basis of equality. During the period in question the Monongahela and the Wheeling ordered 70,884 cars from the Pennsylvania and 49,899 cars from the Lake Erie, or a total of 120,783 cars. They were furnished 45,522 cars and 54,283 cars, respectively, in response to these orders, or a total of 99,805 cars. The discrepancy between the

latter figure and the figure previously given as representing the total number of cars received by the mines on the Monongahela and the Wheeling, 110,450 cars, is explained by complainant as probably due to the fact that the Monongahela was in possession of some empties, which it had received under load, and credited these against the orders from the mines, ordering the balance of the mines' requirements from the Pennsylvania and the Lake Erie.

Mines south of Pittsburgh, Pa., on the Lake Erie and mines served by the Monongahela division, Southwest branch, and Pittsburgh west end division of the Pennsylvania are in the same general coal-producing region as are those served by the Monongahela and the Wheeling, and the transportation and other conditions in that region are similar. Nor does it appear that unfavorable weather conditions, not prevailing on the Pennsylvania divisions named and on the Lake Erie, were responsible for the different and less favorable treatment accorded the mines as a whole on the Monongahela and the Wheeling. The coals mined on these Pennsylvania divisions, and on the Lake Erie south of Pittsburgh, are of the same kinds as those mined on the Monongahela and the Wheeling and are used for the same purposes. The operators of these mines were in competition with each other and shipped to the same consuming markets, usually at the same freight rates to eastern markets.

The figures introduced by complainant show the total cars ordered by and delivered to the Monongahela, which also serves mines in Pennsylvania, and defendants raise the point in this connection that the mines of the operators in West Virginia on whose behalf the complaint is filed comprise only a small portion of the total number of mines on the Monongahela and the Wheeling. It was testified for complainant that its membership produces 75 to 80 per cent of the tonnage originating on the Monongahela in West Virginia and that the aggregate rating of the mines located on that road in Pennsylvania is slightly more than half of the aggregate rating of all its mines. It appears, therefore, that complainant's members produce a substantial part of the tonnage originating on the Monongahela. Out of 25 mines on the Wheeling complainant's members operate six.

Upon consideration of the record we find that the practices of the Director General during the period of this complaint in the distribution of coal cars as between the mines as a whole on the Monongahela and the Morgantown & Wheeling railways, on the one hand, and mines on the Pittsburgh & Lake Erie Railroad south of Pittsburgh and on the Monongahela division, Southwest branch, and Pittsburgh west end division of the Pennsylvania Railroad, on the other hand,

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subjected operators of coal mines on the first two named roads to undue prejudice and disadvantage to the extent that the percentage of cars furnished the mines as a whole on the latter roads was less than the average percentage of cars furnished the mines on the other lines named. There is no basis in the evidence for findings as to the extent of the damages, if any, suffered by the individual members of complainant as a result of the undue prejudice above found. The case will be held open and assigned for further hearing, as requested by complainant, upon that question.

No. 10743.

ALLEGHENY STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND PENNSYLVANIA
RAILROAD COMPANY.

Submitted April 8, 1920. Decided March 5, 1921.

The failure of the defendants to perform the service of switching and spotting interstate carload shipments moving between the trunk line and loading and unloading points within the limits of complainant's plant, or to make complainant an allowance covering the cost of that service performed by it, not shown to be unreasonable, but found to subject complainant to unjust discrimination. Reparation denied.

William W. Collin, jr., and Borders, Walter & Burchmore for complainant.

Guernsey Orcutt for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.
McCHORD, Commissioner:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by complainant and defendants and argument thereon was heard.

The complainant corporation manufactures various steel products at its plant at Brackenridge, Pa., on the Conemaugh division, of the Pennsylvania Railroad, in the conduct of which business it there receives large quantities of raw materials and ships out bound large quantities of finished products. By complaint filed July 8, 1919, it alleges that for many years past it has received its
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inbound and delivered its outbound shipments, averaging about 17,000 cars per year for the preceding three years, on an interchange track of the defendant carrier and borne the expense of transferring such shipments between that point and points within the plant; that the said defendant has for some time past made allowances to other companies engaged in similar business for performing a similar switching service at Pittsburgh and Vandergrift, Pa., but has failed, although requested, to make complainant a like allowance; and that therefore complainant has been subjected to the payment of rates for transportation which were and are unreasonable, in violation of section 1 of the act to regulate commerce and of section 10 of the federal control act, and unjustly discriminatory, in violation of section 2 of the act to regulate commerce. The prayer is for the prescription of a reasonable allowance for the future and for reparation.

Complainant owns and maintains within the limits of its extensive plant a total of 6.745 miles of standard-gauge track, laid with 85-pound rails and devoted to its exclusive use. Up to 1905 or 1906 such tracks as were then in place had been constructed and were owned by the defendant carrier, but were then taken over by complainant and since have been materially altered and extended. The inbound and outbound shipments are placed on two tracks of the defendant carrier just outside the plant property, between which and various unloading and loading points within the plant limits they are moved by complainant's motive power. Complainant owns and operates in this and its intraplant work 5 locomotives, one of which is used solely for charging open-hearth furnaces, 2 locomotive cranes, 1 well car, 1 Clark dump car, 4 hopper cars, and 21 gondolas. All inbound shipments which are purchased on a weight basis, and perhaps others, are weighed on a track scale within the plant before they are spotted, and outbound shipments also are so weighed before placement on the interchange track. The trackage system is somewhat intricate and the unloading and loading is done at many points within the plant, but it is testified that practically all the tracks are used in connection with the inbound and outbound movements.

About June, 1917, the complainant made application to the defendant carrier for an allowance for the interchange switching and spotting service, and later was advised that the general accounting committee of the railroads had made a favorable recommendation concerning it; but federal control intervened, and thereafter the matter progressed no farther than a suggestion on behalf of the United States Railroad Administration that it be brought to this Commission for adjustment. Complainant cites published allowances made by the defendant carrier to certain industries at several

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points, including Pittsburgh and Vandergrift, which points and Brackenridge take generally the same interstate rates and in competition with which industries complainant buys its raw material and sells its finished products. It submits, in exhibit form, details of its tonnage for the year ending June 30, 1918, together with cost figures for the years ending June 30, 1917, 1918, and 1919, respectively, the details of which need not be set forth herein. It would appear, however, that some of the included items are not embraced in or confined to the interchange service, and it was admitted that the engine-hours charged to that service may and probably do include the time consumed at the track scale. Complainant would be willing that the defendant carrier should do the work, providing that the spotting could be done when and where complainant wants it, but does not believe that it could be done as efficiently or economically as with the plant motive power. Its sole witness was not able to say whether the carrier had ever been requested to perform the service.

Defendants submit lists showing numerous industries on the Pennsylvania lines east of Pittsburgh that perform all or part of their own plant spotting without allowances therefor, and those, including complainant, that have applied for but have not received such allowances. For the most part these industries are located at points well to the east of Pittsburgh. The degrees of track curvature within the plant are not definitely shown, but the assistant trainmaster of the Conemaugh division of the Pennsylvania testified that the type of switch engine in use on that division, mounted on eight driving wheels and a pony truck, could not safely operate around some of the curves, and that on an emergency occasion one of them entered the plant and was derailed on the curve leading to the track scale. The engines used by complainant are of smaller types. Defendants formally offer to perform the service, if it shall be found to be their legal duty, in so far as the plant-track conditions make it practicable, but point out that for reasons of efficiency and economy the complainant plainly prefers to do the work.

The case is not one in which increased charges have been imposed upon the complainant through a cancellation of former allowances or a discontinuance of a switching and spotting service by the trunk line since January 1, 1910; and it does not appear that the trunk line has ever been requested to perform the service in lieu of the desired allowance. While comparative track and related conditions at the various indicated industries are not satisfactorily shown, it appears that certain similarly situated and competing industries in the Pittsburgh rate district are accorded allowances for such services performed by them. Upon this situation, apparently, a violation of section 2, rather than of section 3, of the act was predicated in the

complaint. See *Richmond Chamber of Commerce v. S. A. L. Ry.*, 44 I. C. C., 455, 464.

The facts of record are not deemed such as to support a finding of unreasonableness, but we find that in respect of interstate car-load traffic moving between the trunk line and loading and unloading points within the limits of complainant's plant, the failure of the defendants to perform the switching and spotting service with their own motive power, or to make an allowance to complainant covering the cost of that service performed by it does and will for the future subject complainant to unjust discrimination as between it and similarly situated competitors in the Pittsburgh rate district for whom such services are performed by the defendants without additional charge or to whom allowances are made for the performance thereof. It does not appear that complainant has been pecuniarily damaged by reason of the alleged discrimination and reparation is denied.

An appropriate order will be entered.

60 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1252.
SULPHUR AND BRIMSTONE FROM LOUISIANA AND TEXAS POINTS.

Submitted February 3, 1921. Decided March 3, 1921.

Proposed increased rates and lower minimum on sulphur, ground or refined, in carloads, from points in Louisiana and Texas to interstate destinations found justified. Order of suspension vacated and proceeding discontinued.

Denegre, Leovy & Chaffe, and Jas. Hy. Bruns for respondents.

Wm. E. Rosenbaum for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective December 1, 1920, the respondents propose to increase the rates on ground or refined sulphur, in carloads, from Sulphur Mine and Mossville, La., and Bryanmound, Freeport, Gulf Hill, and Damon, Tex., to various interstate points and points in Canada. Upon protest of the Southern Acid & Sulphur Company the schedules were suspended until March 31, 1921. Rates will be stated in cents per 100 pounds.

The local rates of the carriers in central territory are higher on ground or refined sulphur than on crude sulphur. The same is true of the joint rates from Louisiana and Texas points to certain points in central territory, the difference in no instance exceeding 6 cents, but to all other destinations the present rates are the same as the rates on crude sulphur. To these various destinations, including points in central territory, the rates on each of these commodities are subject to a carload minimum of 80,000 pounds. In the suspended schedules it is proposed to reduce the carload minimum on ground or refined sulphur to 40,000 pounds and to establish rates thereon 10 cents higher than those on crude sulphur.

Formerly all the sulphur used in this country was imported, chiefly from Sicily. Respondents testified that when the sulphur mines were opened in the southwest the carriers were asked to provide rates which would permit movement in competition with the imported product; that a low basis of rates was thereupon established via New Orleans, the carriers to that point accepting as their division 9 cents, which was then the ocean rate from Sicily, and the lines beyond making up the balance of the joint rates by adhering

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closely to the lowest rate from the Atlantic seaboard. Milling in transit was later authorized at Texarkana, Tex., Lake Charles, La., and certain other points. Under these arrangements crude sulphur could be shipped from the mines, ground or refined at a small charge per car, and reshipped within a specified period, with protection of the joint rate from point of origin to destination. This service was first permitted at Texarkana in 1911 and at Lake Charles in 1919. There was no change in the rates when these transit services were authorized. The minimum weight on sulphur, originally established at 30,000 pounds, was increased to 40,000 pounds in 1917. In 1919 it was increased to 80,000 pounds, subject to modification in cases where the weight-carrying capacity or loading capacity of the car furnished was less.

For respondents it was testified that the tariff changes here proposed grow out of the applications of the shippers for a lower minimum on ground or refined sulphur; that these applications were regularly docketed by the carriers and opportunity afforded shippers to be heard; that representations were then made that a 40,000-pound minimum was necessary to permit competition with eastern manufacturers who could ship at that minimum, and because certain grades of refined sulphur, shipped in barrels, could not be loaded to the present minimum without damage; and that at those proceedings the protestant recognized that a reduction in the minimum might properly be accompanied by a reasonable increase in the rates. They stated that from New York, N. Y., and Baltimore, Md., to Chicago, Ill., and various destinations east and west of the Mississippi River, the rates on ground or refined sulphur generally exceed the rates on crude sulphur by more than 10 cents, but that the basis here proposed was adopted after an investigation which disclosed that this amount represented the average difference between the respective rates from the eastern seaboard to points at which Louisiana and Texas mills meet their chief competition.

Crude sulphur is shipped in bulk. The average per-car loading shown by this record is in excess of 100,000 pounds and the value is from \$10 to \$18 per ton. Ground or refined sulphur is shipped in packages or barrels. The average per-car loading appears to be approximately 65,000 pounds and the value is from \$30 to \$60 per ton. Directing attention to these differences in the respective commodities, respondents assert that there is no reason why the depressed basis of rates provided on crude sulphur should be continued on the manufactured product.

Using for example the present and proposed rates of 44 and 54 cents from Sulphur Mine to Chicago, 999 miles, the car-mile earnings based on the average loadings would be: on crude sulphur,

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44.04 cents; on ground or refined sulphur, present 28.63 cents, proposed 35.14 cents.

Respondents show that the proposed rates compare favorably with rates on refined sulphur from New York to various destinations in Illinois and west of the Mississippi River. They also cite various rates on scrap iron, showing that from Sulphur Mine and Freeport to some destinations in different states the ton-mile earnings closely approximate the earnings under the proposed rates from and to the same points.

Protestant operates a refining plant at Texarkana and a grinding plant at Lake Charles. The only other large refinery in this territory is located at Freeport, but no protest was filed in its behalf. Protestant contends that as no reduction was made in the rates when the carload minimum was increased from 40,000 to 80,000 pounds, ground or refined sulphur should not now be subjected to an increase in the rates because of a reduction in the carload minimum. It undertakes to show that the present rates on sulphur from Sulphur Mine to a number of destinations are relatively high as compared with the rates on junk, stone, brick, and oyster shells from Texas common points to the same destinations. There is no analogy between sulphur and these various commodities, nor is it shown that there is similarity of transportation conditions affecting the respective rates. While the rates on sulphur are grouped to many points, the record does not disclose whether the distances to the points selected are fairly representative of the average distances. Neither these comparisons nor respondents' comparisons with the rates on scrap iron are of material value in this proceeding.

Respondents' exhibits show that the car-mile earnings at the present rates and minimum are materially higher than would result under the proposed rates and minimum and slightly higher than would result under the rates proposed, based on an average car loading of 65,000 pounds.

Citing the rates on crude and ground sulphur from Cody, Wyo., to a number of destinations, protestant shows that no distinction is observed as between these respective commodities, that each is subject to a carload minimum of 40,000 pounds, and that the rates are on a materially lower basis than the rates proposed in the suspended schedules. It further contends that because of this lower basis from Cody and the carriers' failure to make increases in such rates corresponding to the increases here proposed, the suspended schedules, should they become effective, would accentuate an unduly prejudicial adjustment as between these respective origin points, and this claim, in reality, appears to be its chief objection to the proposed rates. Most of the rates cited from Cody are local rates of the Chicago,

Burlington & Quincy, and it does not appear that respondents control the rates from that point. Moreover, according to respondents' testimony, the movement from Cody is relatively inconsequential.

While the record discloses that the carriers' practices in different sections of the country are not uniform as to the respective carload minimum weights provided on crude sulphur and on ground or refined sulphur, some authorizing the same minimum, and others authorizing the basis proposed to be made effective by respondents, it appears that protestant's chief competition is from eastern points from which, as has been stated, the excess of the rates on ground or refined sulphur over those on crude sulphur is generally greater than 10 cents.

We find that the proposed rates have been justified. Our order of suspension will be vacated and the proceeding discontinued.

60 L. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1259.

ACID FROM HILLSBORO, ILL., TO OHIO RIVER POINTS.

Submitted February 5, 1921. Decided March 1, 1921.

Proposed cancellation of commodity rate on acid n. o. i. b. n., in tank-car loads, from Hillsboro, Ill., to certain Ohio River crossings, found justified. Order of suspension vacated and proceeding discontinued.

R. W. Ropiequet for protestant.

L. P. Day for respondents.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective December 15, 1920, respondents propose to cancel their commodity rate of 20.5 cents per 100 pounds on acid, n. o. i. b. n., in tank-car loads, from Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind., leaving in effect rates of 29.5 cents to Cincinnati, 23.5 cents to Evansville, and 27.5 cents to Jeffersonville, which are 90 per cent of the fifth-class rates. Upon protest of the American Zinc, Lead & Smelting Company, manufacturers of spelter at Hillsboro, the schedules were suspended until April 14, 1921. The Cleveland, Cincinnati, Chicago & St. Louis has its own rails from and to the points named, and this carrier, which assumed the burden of justifying the suspended schedules, will hereinafter be referred to as respondent. Rates will be stated in cents per 100 pounds.

Effective April 10, 1917, respondent established a commodity rate of 10 cents on sulphuric acid in tank-car loads from Hillsboro to these crossings to apply locally, and also as a proportional rate on traffic destined to an extensive section south of the Ohio River, known as "Green Line" territory. On March 13, 1918, following *Traffic Bureau, Toledo Commerce Club v. O., H. & D. Ry. Co.*, 43 I. C. C., 446, and *Indianapolis Chamber of Commerce v. C., O., O. & St. L. Ry. Co.*, 46 I. C. C., 547, the application of the rate as a proportional rate was canceled. It was increased to 11.5 cents on May 11, 1918, under authority of *The Fifteen Per Cent Case*, 45 I. C. C., 308, and to 14.5 cents on June 25, 1918, by general order No. 28 of the Director General of Railroads. Under the reissue of the tariff, effective May 60 I. C. C.

25, 1919, its application was extended to traffic for beyond. On August 26, 1920, it was increased to 20.5 cents under *Increased Rates, 1920*, 58 I. C. C., 220. While applying on acid n. o. i. b. n., apparently only sulphuric acid moves under this rate.

Respondent's witness testifies that its purpose in establishing the rate in 1917 was to meet a competitive rate of the Chicago & Eastern Illinois from and to the same points on traffic destined to "Green Line" territory, and that the application of this rate to local traffic was due to a tariff error; also that the tariff effective May 25, 1919, and subsequent issues published this rate through error. In November, 1919, it filed application with the district committee of the Railroad Administration to cancel the rate. It is testified that no action was taken because of the expected early termination of federal control, and that the object of the proposed schedules is to correct the tariff errors referred to and to cancel the application of the rate both as a local and as a proportional. Effective February 1, 1918, the Chicago & Eastern Illinois canceled its proportional rate from Hillsboro to these crossings.

Prior to December 15, 1920, respondent also maintained commodity rates on acid n. o. i. b. n., from Danville, Ill., to these crossings, but they were canceled on that date by other schedules which were not protested and the class basis thereupon became applicable and has since been in effect.

Respondent urges that the present rates are unduly low; that, with the exception of some applying intrastate, the rates from all other points on its lines in central territory are uniformly 90 per cent of fifth class, the basis generally in effect in that territory; that because of these rates from Hillsboro urgent demands have been made for the establishment of commodity rates from that point to other crossings and from other points to the several crossings; and that the present departure from the general adjustment in favor of Hillsboro is not only unwarranted but results in undue preference.

Protestant's sulphuric acid is a by-product derived from the manufacture of spelter and has a value of from \$9 to \$10 per ton. Its witness refers to the large quantity of such acid produced in Illinois, the necessity for preventing its accumulation at the smelters, and says that while many of these producing points find a market at Chicago, Ill., or other large manufacturing centers near their plants, a number, including Hillsboro, must frequently find markets in other territory. Protestant directs attention to numerous commodity rates less than 90 per cent of the class basis maintained intrastate in Illinois, to the increase of nearly 200 per cent over the rate of 1917 in the proposed rate to Cincinnati, and to contracts for delivery of this commodity at Cincinnati made by it on the basis of the present rates.

60 I. C. C.

Protestant's principal competition in the sale of sulphuric acid at Ohio River points is from Copperhill, Tenn., and it relies largely upon comparisons of the proposed rates with commodity rates of the Louisville & Nashville from that point. The respective rates and distances are shown in the following table:

To—	From Hillsboro.		From Copperhill.	
	Distances.	Rates.	Distances.	Rates.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Cincinnati.....	303	29.5	397	1 19.4
Evansville.....	227	28.5	537	1 23.75
Jeffersonville.....	320	27.5	387	1 21.4

¹ These amounts are the equivalent in cents per 100 pounds of rates published on a per-ton basis.

² Combination on Louisville, Ky.

Protestant urges that elimination of the present commodity rates would result in unreasonable rates and in an unduly prejudicial adjustment, accentuated by the increase of 40 per cent in the "eastern group" as compared with 25 per cent in the "southern group" authorized in *Increased Rates, 1920, supra*.

As the basis proposed to be made effective applies generally in this territory it may not be condemned as unreasonable merely because of the lower basis maintained from Copperhill. Nor can undue prejudice be predicated upon the relative adjustment as respondent does not participate in the rates from Copperhill. While the rates proposed represent a marked increase over the commodity rate at present applicable to Cincinnati and Jeffersonville, this fact should not bar respondent from increasing the present rate, if it is unduly low or creates a preferential adjustment.

Attention is directed by protestant to interstate commodity rates from and to several points in this territory lower than the proposed class rates of respondent, but no testimony is offered as to the transportation conditions respecting those rates and little weight may here be attached to them.

We find that the proposed schedules have been justified. Our order of suspension will be vacated and the proceeding discontinued.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1241.
GRAIN FROM MISSISSIPPI AND MISSOURI RIVER
CROSSINGS TO ARKANSAS.

Submitted December 17, 1920. Decided March 1, 1921.

Proposed increased rates, local and proportional, on grain and grain products from Mississippi and Missouri River crossings and related points to destinations in Arkansas found not justified, with the exception of increased local rates from Kansas City, Mo., and points taking the same or related rates, to Arkansas City and Eudora.

Henry G. Herbel for respondents.

A. D. Beale for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

By schedules filed to become effective November 22, 1920, respondents propose to substitute for the local and proportional rates on grain and grain products from St. Louis, Mo., and related points, to destinations in Arkansas, which, under *Increased Rates, 1920*, 58 I. C. C. 220, are 85 per cent higher than those in effect prior to August 26, 1920, rates made by adding to the present rates to Little Rock, Ark., 135 per cent of the former differentials over Little Rock. A corresponding change is proposed in the proportional rates from Missouri River crossings to the same points. It is also proposed to substitute for the local rates from Kansas City, Mo., and points in Colorado, Kansas, Missouri, Nebraska, and Oklahoma, to New Orleans, La., and related Arkansas points, rates made 1 cent under the local rates to the same points from Omaha, Nebr. The effect of these changes would be in some instances to increase the rates 0.5 cent per 100 pounds. Upon protest of the Arkansas Jobbers & Manufacturers Association the proposed increased rates to Arkansas points at which members of that association are located were suspended until March 22, 1921. Unless otherwise stated, the points hereinafter named are in Arkansas. Rates will be stated in cents per 100 pounds.

Taking Benton, the first station south of Little Rock to which increased local and proportional rates from St. Louis and related points and increased proportional rates from Missouri River cross-

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ings were protested and suspended, as illustrative, the situation is as follows: Prior to August 26, 1920, the proportional rate on wheat and flour from St. Louis to Little Rock was 18.5 cents, and the cereal-products rate was differentially 10 cents higher; to Benton the rates on wheat and flour were differentially higher than to Little Rock by 4 and 5 cents, respectively, and the rate on cereal products was differentially higher by 10 cents than the flour rate so made. The 35 per cent increase resulted in rates to Little Rock of 25 cents on wheat and flour and 38.5 cents on cereal products, the differential being increased to 13.5 cents; and to Benton of 30.5 cents on wheat, 31.5 cents on flour, and 45 cents on cereal products. Respondents contend that the rates to Benton on flour and cereal products are not properly related to the rates to Little Rock; that the flour rate should be 7 cents, 135 per cent of 5 cents, higher than to Little Rock, and the rate on cereal products 13.5 cents over the flour rate, as at Little Rock. No change in the proportional rate on wheat to Benton is proposed.

Proportional rates from Kansas City to Little Rock and Benton were 4 cents over those from St. Louis, and from Omaha 3 cents over Kansas City; so the same increases are proposed to Benton from Kansas City and Omaha as from St. Louis.

The local rates from St. Louis to Little Rock prior to August 26, 1920, were 25 cents on flour and wheat and 35 cents on cereal products, and on the date named became 34 cents and 47.5 cents, respectively. The Benton rates were increased from 29 cents on wheat, 30 cents on flour, and 40 cents on cereal products, to 39 cents, 40.5 cents, and 54 cents, respectively, and it is proposed to increase all three by 0.5 cent.

The only increases in local rates from the Missouri River and related points here suspended are those to Arkansas City and Eudora from Kansas City and points taking the same or related rates. For some years there has been a differential of 1 cent, Kansas City under Omaha, in local rates to New Orleans and related Arkansas points on grain and grain products. Effective August 26, 1920, the local rates from Kansas City and Omaha to New Orleans were increased from 33 and 34 cents, respectively, to 44.5 and 46 cents, and the differential of Arkansas City and Eudora over New Orleans was increased from 3 to 4 cents. In the tariff containing the suspended schedules the Kansas City-New Orleans local rate was increased to 45 cents, and a corresponding increase was proposed to Arkansas City and Eudora. The effect of this change would be to restore the 1-cent differential, Omaha over Kansas City, in local rates to Arkansas City and Eudora, as well as to New Orleans.

The relationship of Arkansas points to Little Rock in proportional rates on grain and grain products from Mississippi and Missouri
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River crossings was considered in *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 59 I. C. C., 662, decided December 22, 1920, and we there fixed minimum proportional rates from St. Louis, Cairo, Ill., and Thebes, Ill., to Little Rock, Pine Bluff, and Fort Smith, and proportional rates from the same points of origin to a number of other destinations in Arkansas. The effect of this is indicated in the following table, which shows proportional rates from St. Louis in effect prior to August 26, 1920, and the rates prescribed, the latter subject to 85 per cent increase under *Increased Rates, 1920, supra*.

	Rates in effect prior to Aug. 26, 1920.		Rates prescribed, subject to 85 per cent increase, on grain and grain products, including flour.
	On wheat.	On flour.	
From St. Louis to—	Cents.	Cents.	Cents.
Little Rock, Ark.....	18.5	18.5	20
Pine Bluff, Ark.....	18.5	18.5	22
Fort Smith, Ark.....	20	20	23
Hot Springs, Ark.....	25.5	26.5	22
Dermott, Ark.....	22.5	24.5	25
Prescott, Ark.....	26.5	27.5	24

The rates to Benton were not brought in issue in that case, but we said, at page 668:

To be consistent the rate to Benton should not exceed the rate to Little Rock by more than 1 cent, with corresponding adjustment south of Benton.

In the case cited in describing the adjustment of proportional rates from Kansas City to Arkansas in effect at the time of the hearing, when the St. Louis-Little Rock proportional rate on grain and grain products was 17.5 cents, we said, at page 667:

The proportional rates from Kansas City apparently bore no fixed relationship to those from St. Louis except in the territory where 17.5 cents applied from St. Louis. To points on the St. Louis-San Francisco in northeastern Arkansas and on the Missouri Pacific and St. Louis Southwestern, including also points on the Chicago, Rock Island & Pacific between Little Rock and Bridge Junction, the proportional rates from Kansas City were 5 cents higher than those from St. Louis. Thus at Little Rock the rates on both flour and grain from Kansas City and from St. Louis were 22.5 cents and 17.5 cents, respectively. South of Little Rock and Pine Bluff this difference decreased until at Texarkana the rates were the same from both St. Louis and Kansas City. In southeastern Arkansas the Kansas City rates were from 2.5 cents to 4 cents higher than those from St. Louis. At Fort Smith, in the western part of the state, the rate was 2.5 cents lower from Kansas City.

69 I. C. C.

We prescribed no rates from Kansas City, saying at page 669:

Complainant advocates the establishment of a distance scale, based on the proportional rate from St. Louis to Little Rock in effect June 24, 1918, with increase or decrease of one-half cent for each 25 miles south or north of Little Rock, and then increased by 25 per cent. Apparently the same scale is desired on traffic from Cairo, Thebes, and Kansas City. A rigid distance scale would disrupt relationships as between the different gateways. The record does not afford a satisfactory basis for readjustment of rates from Kansas City or for prescribing equal rates, mile for mile, from both Kansas City and St. Louis.

Respondents offered no evidence other than a statement of the number of increases, some under suspension and some not, and reductions effected by the change of bases, and a statement of the desirability from their point of view of maintaining certain relationships.

We find that the proposed increased rates have not been justified, with the exception of those from Kansas City, and points taking the same rates, to Arkansas City and Eudora. Respondents will be required to cancel the schedules under suspension, without prejudice, however, to the filing of schedules establishing, on not less than five days' notice, rates in conformity with our findings herein. Our findings are without prejudice to any different conclusions that may be reached in Docket No. 10592, *Arkansas Jobbers & Mfrs. Assn. v. Director General*, now pending, involving rates on grain and grain products throughout the same territory.

An appropriate order will be entered.

60 I. C. C.

No. 10756.

EDWARD HINES LUMBER COMPANY ET AL.

v.

DIRECTOR GENERAL, BALTIMORE & OHIO RAILROAD
COMPANY, ET AL.

Submitted November 23, 1920. Decided March 1, 1921.

Rates on lumber, in carloads, from Chicago, Ill., to points in eastern trunk line territory, and to points in central territory, found not unreasonable or unjustly discriminatory, but found unduly prejudicial. Reparation denied and complaint dismissed.

Adams, Childs, Bobb & Wescott for complainants.

Jeffery, Campbell & Clark and *Walter D. Burr* for interveners.

D. P. Connell and *L. P. Day* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, McCHORD, AND DANIELS.

BY DIVISION 2:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainants are the Edward Hines Lumber Company and Herman H. Hettler Lumber Company, corporations engaged in the manufacture and sale of lumber at Chicago, Ill. By complaint filed July 8, 1919, they allege that the rates on lumber, in carloads, from Chicago to points in eastern trunk line territory from July 16, 1917, to October 22, 1918, and to points in central territory from September 22, 1917, to October 22, 1918, were unjust and unreasonable, unjustly discriminatory, and unduly prejudicial. They seek reparation only. An intervening petition was filed on behalf of the Chicago Mill & Lumber Company, Republic Box Company, and Rathborne, Hair & Ridgway Company, manufacturers of box and crate materials at Chicago. Based upon allegations similar to those made by complainants they seek reparation on their shipments of box shooks and box materials, which moved on the lumber rates from Chicago to similar destinations during the same periods. Rates will be stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Complainants and interveners contend that the rates from Chicago to eastern trunk line and central territories as increased during the

60 I. C. C.

periods complained of were unreasonable, and unduly prejudicial as compared with the rates contemporaneously in effect from St. Louis, Mo. No testimony in support of the alleged unjust discrimination was offered.

Lumber is rated sixth class in official territory and generally moves intraterritorially on class rates. The only notable exceptions to this rule in central territory prior to October 22, 1918, on which date Chicago was accorded commodity rates, were the rates from the Ohio and Mississippi River crossings and points contiguous thereto, and a few points in southern Michigan affected by water competition. Thus, during the period complained of and for many years prior thereto, the lumber rates from Chicago were class rates while the rates from St. Louis were commodity rates. The relationship between the rates on lumber from Chicago and from St. Louis to points here considered was disturbed, when, following our decisions in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and the *C. F. A. Class Scale Case*, 45 I. C. C., 254, the carriers serving Chicago, on July 16, 1917, increased their class rates to points in eastern trunk line territory 15 per cent, and on September 22, 1917, superimposed a like increase on a new and increased scale of class rates from Chicago to points in central territory, while no increase was made in the commodity rates on lumber from St. Louis until May 15, 1918, when a flat increase of 1 cent per 100 pounds became effective under the permission contained in our supplemental order of March 12, 1918, in *The Fifteen Per Cent Case*, *supra*. In most instances the increases in the rates from Chicago were in excess of 1 cent. Again, on June 25, 1918, under the provisions of general order No. 28 of the Director General of Railroads, the class rates from Chicago were uniformly increased 25 per cent whereas the increases in the commodity rates from St. Louis were 25 per cent with a maximum increase of 5 cents per 100 pounds. This had the effect of further widening the spread in the rates on lumber from Chicago and from St. Louis to points in eastern trunk line territory. Effective October 22, 1918, the Director General initiated commodity rates from Chicago constructed on the basis of the class rates which were in effect prior to July 16 and September 22, 1917, increased by 1 cent per 100 pounds, plus a further increase representing 25 per cent thereof, but not exceeding an increase of 5 cents per 100 pounds. By this readjustment the former relationship between the rates from Chicago and from St. Louis was restored except as affected by the rule for the disposition of fractions.

The following table, taken from complainants' exhibits of record, is illustrative of the rate situation above described:

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To—	Rates from St. Louis.			Rates from Chicago.					Reduction.
	Prior to May 15, 1918	May 15, 1918.	June 25, 1918, and present.	Prior to July 16, and Sept. 22, 1917. ¹	July 16, and Sept. 22, 1917. ¹	June 25, 1918.	Oct. 22, 1918, and present.		
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	
Lansing, Mich.....	12.6	13.6	17	10.5	13	16.5	14.5	2	
Toledo, Ohio.....	12.6	13.6	17	10.5	13	16.5	14.5	2	
Cleveland, Ohio.....	13.7	14.7	18.5	12.6	15	19	17	2	
Detroit, Mich.....	12.6	13.6	17	10.5	14	17.5	14.5	3	
Youngstown, Ohio.....	14.7	15.7	19.5	14.2	16.5	20.5	19	1.5	
Pittsburgh, Pa.....	18.4	19.4	24.5	15.8	17.5	22	21	1	
Rochester, N. Y.....	21	22	27	19.5	22	27.5	25.5	2	
Syracuse, N. Y.....	22.9	23.9	29	21	24	30	27	3	
Baltimore, Md.....	24.3	25.3	30.5	23.2	27	34	29.5	4.5	
Utica, N. Y.....	24.8	25.8	31	23.7	27	34	29.5	4.5	
Philadelphia, Pa.....	25.3	26.3	31.5	24.3	28	35	30.5	4.5	
Albany, N. Y.....	26.2	27.2	32	25.2	29	36.5	31	5.5	
New York, N. Y.....	27.3	28.3	33.5	26.3	30	37.5	32.5	5	
Boston, Mass.....	29.3	30.3	35.5	28.3	32	40	34.5	5.5	

¹ Prior to July 16, 1917, to points in eastern trunk line territory, and prior to Sept. 22, 1917, to points in central territory.

² Effective July 16, 1917, to points in eastern trunk line territory, and Sept. 22, 1917, to points in central territory.

Complainants show that the car-mile earnings, based on an average loading of 58,000 pounds, yielded by the rates in effect from Chicago prior to and during the period complained of exceeded the returns on the St. Louis rates contemporaneously in effect to the same destinations or destinations of comparable distance.

Exhibits filed by complainants compare the through rates with the combination of rates by way of Chicago on lumber from Elizabeth, La., Duluth, Minn., and Hoquiam, Wash., to representative destinations in eastern trunk line and central territories together with the resulting differences produced by the increases herein complained of. In addition, complainants have submitted in evidence the record in *Lumbermen's Assn. of Chicago v. A. A. R. R. Co.*, 51 I. C. C., 431. Numerous comparisons based on the exhibits therein filed are cited by the complainants on brief, particularly with reference to the percentages of increase in the car-mile earnings yielded by the Chicago rates after the increases of July 16 and September 22, 1917, as compared with the earnings on the commodity rates which were in effect at the time of the hearing in that case on December 10, 1917, from St. Louis and other river crossings and from producing points in other territories. Likewise comparisons are cited from the exhibits in that case showing the higher per car-mile yield on the lumber rates from Chicago as compared with the like yield on the commodity rates then in effect on grain, brick, and cement.

Defendants show that their earnings on complainants' shipments averaged as follows: 126 cars to eastern trunk line territory, 23.45 cents per car-mile, 7.26 mills per ton-mile, for 846 miles; 459 cars to

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central territory, 27.62 cents per car-mile, 9.42 mills per ton-mile, for 346.8 miles. They contrast these returns with those on 396 cars of various commodities moving eastbound from Chicago on sixth-class rates during November, 1918, which averaged 28.86 cents per car-mile. They point out that the average car-mile earnings on complainants' shipments to eastern trunk line and central territories were 5.41 cents and 1.24 cents, respectively, less than the average returns of the various other commodities which moved eastbound from Chicago on sixth-class rates during the period considered. They show that complainants' shipments consisted of maple and yellow-pine lumber, which load heavily, and contend that if other lumber articles, taking the lumber rates, were considered, the car-mile yield would be lower, and state in support thereof that complainants' shipments averaged about 59,000 pounds to the car, whereas the great majority of interveners' shipments did not load in excess of 35,000 pounds.

In explanation of the commodity rates from the river crossings, defendants assert that they were originally published as proportional rates on through traffic, and were constructed with reference to the sixth-class rates from Lexington, Ky., to New York, N. Y., in trunk line territory, and to Buffalo, N. Y., and Pittsburgh, Pa., in central territory, that because of the fact that the lines from the south could deliver shipments to the Chesapeake & Ohio Railway at Lexington for movement to Virginia cities gateways where connections could be made with both rail and water lines operating to north Atlantic ports, the lines north of the Ohio River were compelled to grant the divisions demanded by the lines south; that accordingly, proportional rates from Cincinnati, Ohio, were published which were lower than the local rates to the same destinations in these territories, and proportional rates from the other crossings were published with reference to the Cincinnati proportionals; that because of the practice indulged in by Cincinnati dealers in shipping out on the proportional rates mixed carloads containing lumber, manufactured or yarded at that point, it was found advisable after the passage of the Elkins act to publish the proportional rates from the crossings as local rates. Defendants, therefore, urge that the rates from St. Louis and the river crossings should not be taken as a measure to be applied in testing the reasonableness of the rates from Chicago from which point no such competitive conditions obtained.

Except where competitive conditions have entered into the making of the rates, lumber moves on class rates from points in central territory. Eastbound lumber rates from Chicago were on the sixth-class basis prior to January 1, 1910. There is no evidence of record that this basis was unreasonable. On the contrary, it forms a

foundation upon which complainants' and interveners' claims for reparation are built. Conceding that the rates which were in effect from Chicago prior to July 16 and September 22, 1917, were reasonable, it does not follow that the increases subsequently imposed thereon under the permissive order of the Commission in *The Fifteen Per Cent Case*, and the *C. F. A. Class Scale Case*, *supra*, and general order No. 28 of the Director General, made the resulting rates inherently unreasonable. Undoubtedly, however, and it is practically conceded by the defendants, these resulting rates were unduly prejudicial to Chicago shippers as compared with the rates contemporaneously in effect from St. Louis. We find that the rates assailed were not unreasonable or unjustly discriminatory, but that they were unduly prejudicial as compared with the rates contemporaneously in effect from St. Louis, Mo.

The testimony submitted by complainants and interveners in proof of the damages they sustained was directed mainly to showing the disadvantage they were under in competition with St. Louis in the sale of yellow-pine lumber from the south. Counsel for complainants withdrew all claims for reparation on shipments of hardwood lumber. Interveners' inbound shipments consisted entirely of southern yellow pine. On the inbound movement of this lumber, St. Louis had previous to general order No. 28 an advantage of 7.5 cents per 100 pounds over Chicago in the rates from the southern yellow-pine belt. This advantage was increased to 8 and 8.5 cents under the rates established pursuant to that order. This advantage is a natural one due to St. Louis' location, and it is not questioned by complainants. Proof is lacking that complainants or interveners suffered damage in their competition with St. Louis dealers to the extent of, and as a direct consequence of, the preferences accorded St. Louis under the readjustments complained of. All of the shipments upon which reparation is sought were sold on a delivered basis. Many of these sales were made on long-term contracts at fixed destination prices. Witnesses for the Edward Hines Lumber Company state that the greater part of their shipments were sold on such contracts, and that these contracts were entered into prior to the 1917 increases. Thus, while this complainant necessarily absorbed these rate increases out of its selling prices, it can not be said that it was damaged as a result of the preferential rates accorded the St. Louis dealers. On the other hand, witness for the Herman H. Hettler Lumber Company admitted that in arriving at the delivered price his company added the freight rate in effect at the time of shipment to the Chicago base price. Interveners concede that local competition is met by them at all cities of any consequence throughout these territories. This evidence does not measure up to

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that degree of certainty required under the decision in *Penna. R. R. Co. v. International Coal Co.*, 230 U. S., 184, to entitle complainants and interveners to an award of reparation upon a finding of undue prejudice. Accordingly, reparation is denied, and the complaints will be dismissed.

No. 4800.

SLOSS-SHEFFIELD STEEL & IRON COMPANY ET AL.
v.
 LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

Submitted February 8, 1921. Decided March 8, 1921.

Upon further hearing reparation awarded on shipments of pig iron, in carloads, from points in Alabama and Tennessee to Ohio River crossings and points in central freight association territory. Preceding supplemental report 52 I. C. C., 576.

Appearances same as before.

SIXTH SUPPLEMENTAL REPORT OF THE COMMISSION.

CLARK, *Chairman*:

In our previous reports herein we found that the rates on pig iron, in carloads, from points in Alabama and Tennessee to Ohio River crossings and points in central freight association territory were unreasonable, and that reparation should be awarded. In our report of April 7, 1919, 52 I. C. C., 576, we further found that complainants and interveners, hereinafter referred to collectively as complainants, who made shipments during the periods stated from and to the points in question that were not barred by the statute of limitations, upon which rates higher than those found reasonable were charged, and who paid and bore the transportation charges thereon, had been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable; and that such complainants were entitled to reparation with interest. Upon the record then before us the exact amount of reparation could not be determined and statements in accordance with rule V of our Rules of Practice were required. This rule provides, among other things, that complainants shall prepare statements showing the details of the shipments on which reparation is claimed, including the routes of movement, and submit such statements to the carriers which collected the charges, for verification.

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Numerous shipments are involved in this case and complainants could not comply strictly with rule V, although they were able to do so substantially. They also objected to separating and sending the claim papers to the large number of far-distant delivering carriers, many of which claimed exemption from liability under the statute of limitations. Accordingly their counsel suggested to the United States Railroad Administration that it and other defendants should unite as a joint agency to receive all the statements and claim papers, and he had some assurances that such an arrangement could be perfected. However, on September 12, 1919, the United States Railroad Administration advised counsel for complainants that there was little hope of securing the establishment of such an agency. On November 14, 1919, complainants petitioned us for further hearing, and the case was reopened on December 1, 1919, "solely for the purpose of receiving proof of damages on which reparation is claimed."

Further hearing was had February 26, 27, and 28, 1920. Detailed statements describing the shipments, together with supporting documents, embracing, among other things, freight bills, bills of lading, and contracts of sale, offered by competent witnesses, were received in evidence. Complainants' witnesses were cross-examined by defendants, who produced no witnesses, but instead objected to the hearing and filed a motion and petition to dismiss. The motion set forth various contentions and asked, among other things, that all claims be denied where rule V had not been literally complied with or that complainants be required to prepare statements in the manner indicated in the motion. Rule V is intended to provide a convenient method by which the parties may agree upon the exact amount of reparation, without the necessity of further hearings, after we have determined that reparation is due and the basis therefor. If the parties fail to agree, or any other contingency arises by virtue of which further proceedings are required to insure substantial justice, our power is not impaired by the rule; and when the spirit and purpose of the rule have been defeated neither party may insist upon a literal compliance therewith.

It was our desire that the carriers should, in a spirit of cooperation, check the claims submitted at the hearing, in order that the results of the check could be incorporated in the record and in that event defendants' counsel, if they so desired, might be afforded opportunity to further cross-examine complainants' witnesses in the light of any facts developed by the check. In order to facilitate orderly handling of the claims and to expedite disposition of the proceeding we expressed informally our views upon the contentions presented at the hearing by letters addressed to counsel for the

parties, dated August 4 and September 20, 1920. After further correspondence with counsel for the parties, defendants were advised that unless definite action were taken before February 1, 1921, the evidence submitted would be the basis for determining the amounts of reparation, or, if necessary, the proceeding would be set for further hearing. On January 31, 1921, defendants filed a petition for further argument, which complainants answered February 7, 1921. The petition was denied February 8.

It was stated at the hearing that claims covering shipments to New England points by rail and water would be submitted to the delivering lines for verification, and we need not consider them in this report.

The claims of the Citico Furnace Company have not been properly proven. The witness presenting these claims did not know whether or not the corporation was still in existence.

Claim statements filed by the Roane Iron Company show only delivering carriers. The reparation due that company can not be determined on the record.

The Excelsior Stove & Foundry Company, of Quincy, Ill., seeks reparation on shipments prior to October 1, 1914. An intervening petition was filed by the Stove & Foundrymen's Association, of Quincy, Ill., on November 7, 1912, asking reparation, but it did not state that the Excelsior company was one of its members. An intervening petition was also filed by the Quincy Freight Bureau in November, 1914, but reparation was not asked on shipments prior to October 1, 1914. Such claims of the Excelsior company are barred.

Claims filed by the Excelsior Stove & Manufacturing Company based on assignments from the Standard Iron Company, the Roane Iron Company, and the Alabama Consolidated Coal & Iron Company (now the Alabama Company) are denied. The intervening petition of the Standard Iron Company did not seek reparation. The record does not show that the shipments covered by assignments other than those from the Standard Iron Company were sold f. o. b. destination by the assignors and that the claims assigned were originally payable to the assignors.

Claims of the Woodward company include certain shipments moving to points west of central freight association territory. In our original and supplemental reports in this case we held that the allegations in the complaint were not sufficiently broad to cover destinations west of central freight association territory. No complaint was ever filed covering shipments to such destinations prior to October 1, 1914, and no reparation will be awarded on such shipments.

On September 30, 1916, not only the Woodward company but the Sloss-Sheffield Steel & Iron Company and the Roane Iron Company filed supplemental formal complaints covering shipments to this territory moving after October 1, 1914. The carriers were asked if they were willing to file special docket applications covering such shipments, but few, if any, were filed. Complainants should advise if they desire to proceed with these cases under formal procedure.

In the fifth supplemental report the finding of reparation was limited to the period from April 17, 1910, to October 1, 1914. However, another award of reparation was made in the first supplemental report, 35 I. C. C., 460, under which claims covering shipments after October 1, 1914, were properly submitted. Therefore reparation will be awarded on shipments to points in central freight association territory moving after October 1, 1914.

The carriers named in the original complaint filed April 16, 1912, are liable for reparation during the entire reparation period, April 17, 1910, to September 16, 1915; and carriers which intervened are liable for reparation on and after November 8, 1910. The carriers named in our order of November 3, 1914, are liable for reparation on and after July 23, 1913, the petition for reparation on which this order was based having been filed on July 22, 1915. Defendants included in each of the above classes will be shown separately in our order of this date.

Certain defendants deny liability for the full amount of reparation on shipments moving over their own lines but in connection with carriers not subject to an award of reparation. It is well settled, however, that where an unreasonable rate has been collected the liability of the parties is joint and several and we may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service were not made parties defendant. *Southern Pine Lumber Co. v. S. Ry. Co.*, 14 I. C. C., 195. *Webster Grocer Co. v. C. & N. W. Ry. Co.*, 21 I. C. C., 20.

The shipments on which reparation is hereinafter awarded to consignors complainant, namely, Sloss-Sheffield Steel & Iron Company, Alabama Company (successor to Alabama Consolidated Coal & Iron Company,) and Woodward Iron Company were sold f. o. b. destination.

In our previous reports we have by appropriate finding passed upon the rates, fixed the measure of damage, and specified the parties entitled to reparation. We find that complainants, Sloss-Sheffield Steel & Iron Company, Alabama Company (successor to Alabama Consolidated Coal & Iron Company), and Woodward Iron Company, made shipments as described during the periods stated and

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from and to the points in question that are not barred by the statute of limitations, upon which rates higher than those found reasonable by us in this proceeding were collected by defendants; that complainants paid and bore the transportation charges thereon and have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates found reasonable; and that they are entitled to reparation, with interest, from each of the initial carriers defendant in the amounts set opposite the respective names, and as more fully set forth in the following table:

Initial carriers defendant.	Amount of reparation due to—		
	Alabama Company. ¹	Sloss-Sheffield Steel & Iron Company.	Woodward Iron Company.
Louisville & Nashville Railroad Company.....	\$9, 189. 25	\$68, 728. 80	\$15, 579. 06
Alabama Great Southern Railroad Company.....		6, 118. 35	12, 084. 42
St. Louis-San Francisco Railroad Company.....		15, 130. 15	7, 889. 93
Illinois Central Railroad Company.....		1, 908. 90	5, 027. 91
Mobile & Ohio Railroad Company.....		638. 40	270. 71
Southern Railway Company.....		34, 289. 65	405. 26
Atlanta, Birmingham & Atlantic Railroad Company.....			9. 97
Alabama Great Southern Railroad Company.....			² 149. 68
Louisville & Nashville Railroad Company.....			² 330. 97
St. Louis-San Francisco Railroad Company.....			² 70. 00

¹ Successor to Alabama Consolidated Coal & Iron Company.

² Shipments made from Oct. 1, 1914, to Sept. 16, 1915; all other shipments made from Apr. 17, 1910, to Sept. 30, 1914.

Defendants that are not protected by the statute of limitations should join in the payment of reparation according as they participated in the transportation; and, as indicated in our report of April 7, 1919, such carriers as are protected by the statute may join in the payment of reparation.

An appropriate order will be entered.

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No. 11299.¹

WILLIAM WYLIE BEALL

v.

WHEELING TRACTION COMPANY.

Submitted October 29, 1920. Decided March 5, 1921.

Certain intrastate passenger fares of the defendant electric railroad in Ohio found to be unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. Fares prescribed which will remove such preference, prejudice, and discrimination.

Charles J. Schuck for complainant in person in Sub-No. 1.

David I. McCahill and *John C. Palmer* for defendant.

H. G. Pratt, A. W. Moreland, Ralph Levinson, C. C. Sedgwick, Nelson D. Miller, Francis B. James, E. E. Williamson, and Ewing H. Scott for interveners.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, Commissioner:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed and oral argument had.

The Wheeling Traction Company, hereinafter called the traction company, is a corporation operating an electric railroad system in Ohio and West Virginia. Two complaints brought by citizens of Wheeling and Wellsburg, W. Va., which were consolidated and will be disposed of in one report, allege that discriminations arise from the fact that the interstate passenger fares of the traction company are higher than its fares between points within Ohio. The traction company admits the discriminations as alleged in both complaints and joins in asking their removal, stating in its answers that the interstate fares were filed with this Commission, that the intrastate fares are inadequate, unjust, unreasonable, do not cover the cost of furnishing the service, and are maintained solely because of certain franchise requirements of Ohio cities. Notice was served upon the Public Utilities Commission of Ohio, and the Ohio cities interested filed intervening petitions.

¹ This report also embraces No. 11299 (Sub-No. 1), *Charles J. Schuck v. Wheeling Traction Company*.

The traction company's system extends on the West Virginia side of the Ohio River from Weirton south through East Steubenville, Follansbee, Wellsburg, Wheeling, and Benwood to Moundsville. At East Steubenville the tracks cross the river, and the line extends south on the Ohio side from Steubenville through Minge Junction to Brilliant. Another crossing is made at Wheeling, and the lines branching out from Bridgeport on the Ohio side extend west to Barton, north through Martin's Ferry to Rayland, and south through to Shadyside.

The traction company was chartered October 12, 1900, under the railroad laws of West Virginia for the construction and operation of a railroad to connect Wheeling with Bridgeport, Bellaire, and Martin's Ferry. On January 1, 1901, it acquired by consolidation the Wheeling Railway Company, operating in the city of Wheeling; and the Bellaire, Bridgeport & Martin's Ferry Street Railway, with a line extending from Bellaire through Bridgeport to Martin's Ferry. Subsequently it acquired, with other properties forming its system, all the stock of the Steubenville & Wheeling Traction Company, hereinafter called the Steubenville company, extending north from Martin's Ferry to Rayland and south from Steubenville to Brilliant, which it operates by lease. The final link in the traction company's system is supplied by the rails of the Steubenville, Wellsburg & Weirton Railway, from Steubenville across the river to East Steubenville, thence by one line north to Weirton, by another south to Wellsburg, where they connect with the rails of the Panhandle Traction Company. These lines, together with the Steubenville Railway, which extends for a few blocks in Steubenville, are operated by the traction company under lease. All the stock of the Steubenville, Wellsburg & Weirton Railway is owned by the West Penn Traction Company, which in turn owns practically all of the stock of the traction company. All of the lines mentioned connect and are electrically operated.

Wheeling and Bridgeport are on opposite banks of the Ohio River. Part of the former city occupies an island connected with the West Virginia shore by a bridge and with the Ohio shore by two bridges. The traction company's rails are laid on all three bridges, and its cars traveling between Wheeling and Bridgeport cross two of them. At Bridgeport the traction lines diverge, one extending north reaches Martin's Ferry 3 miles distant, and the other serves Bellaire 6 miles south. These three communities are all within what is known as the "Wheeling district" and many of their residents travel daily to and from their places of employment in Wheeling. The distance from Wheeling to Bridgeport is 1.5 miles, to Martin's Ferry 5.72 miles, and to Bellaire 8.16 miles, all including one constructive mile
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added to cover the use of the two bridges. The intrastate fare between Martin's Ferry and Bellaire, a distance of 8.94 miles, is 5 cents. The interstate fares from Wheeling to Bellaire, 8.16 miles, and from Wheeling to Martin's Ferry, 5.72 miles, at the date of hearing were each 10 cents. Subsequently they were increased in accordance with our findings in *Local and Joint Passenger Fares*, 59 I. C. C., 430, to a cash fare of 12 cents and a ticket fare of 10 cents between Martin's Ferry and Wheeling and a cash fare of 16 cents and a ticket fare of 13½ cents between Bellaire and Wheeling. The transportation conditions under which the three movements are made are similar. The entire intrastate journey is made upon cars operated in interstate commerce since no through cars are operated between Bellaire and Martin's Ferry and intrastate passengers are required to transfer at Bridgeport from and to cars operated in interstate commerce.

Under the terms of the franchise granted it by the city of Martin's Ferry, the traction company may not charge more than 5 cents between Martin's Ferry and Bellaire, a distance of 8.94 miles. The Public Utilities Commission of Ohio permits the company to charge 10 cents between Bellaire and Bridgeport, a distance of 5.7 miles, the passenger in the latter journey traveling over the same rails in the same car as the Bellaire-Martin's Ferry passenger. A passenger boarding a car at Bellaire who states his destination as Martin's Ferry pays but 5 cents and is given a transfer to be used at Bridgeport. One who states his destination as Bridgeport, 3 miles less distant than to Martin's Ferry and over the same rails, must pay 10 cents. The practical result is that the traction company can not make use of the authority granted it by the Public Utilities Commission of Ohio to charge 10 cents from Bellaire to Bridgeport because passengers to the latter point invariably escape the higher fare by stating their destination as Martin's Ferry, and upon alighting at Bridgeport either destroy or give away the transfer which may be used by another passenger between Bridgeport and Martin's Ferry. The same situation prevails with respect to travel from Martin's Ferry to Bellaire. The traction company estimates that this transfer privilege is abused to the extent of 10,000 transfers a week and alleges that this results in a substantial reduction in revenues, and interferes with the physical operation of the road by complicating the collection of interstate fares.

Not only is the entire intrastate journey between Bellaire and Martin's Ferry made upon cars operating in interstate commerce, but it is made over the identical rails used in carrying interstate passengers from Bellaire and Martin's Ferry to Wheeling. Except for the half-mile haul across the river between Bridgeport and Wheeling the interstate and intrastate trips differ only in that the state

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trip involves a haul almost as long as the two interstate trips combined. The record indicates that several railroad tracks must be crossed between Bellaire and Martin's Ferry: that for the greater part of the distance the traction company must pave between the tracks; and that at one place the company is subject to continual expense because of the slipping of earth from under its right of way. While these expenditures may not be allocated with any degree of accuracy, the record indicates that the operating cost per passenger between Martin's Ferry and Bellaire is in excess of that per passenger between either Bellaire or Martin's Ferry and Wheeling. This leaves for consideration the operation across the bridges between Wheeling and Bridgeport. Two of the three bridges used by the traction company are owned by an affiliated company, the Wheeling Bridge Company, to which is paid an annual rental of \$10,000. The third bridge is independently owned and an annual rental of \$5,000 is paid. The general manager of the traction company testified that taking into consideration the rentals paid and the constructive mileage added, the operation over the bridges was substantially the same as over street track and that there could be little if any difference in the cost of operating cars in interstate commerce as compared with intrastate commerce. Because of the peculiar circumstances here it would seem that these statements may be accepted as reflecting the true conditions.

The Martin's Ferry franchise also provided that the fares between that city and Wheeling should not exceed 5 cents. On March 20, 1919, we approved an increase in that fare to 10 cents, and the tariff carrying the increase became effective on May 29, 1919. At the same time permission was granted by the Public Service Commission of West Virginia and Public Utilities Commission of Ohio to establish within those states the same basis of fares as was published on interstate traffic, an exception being made by the Ohio commission where the fares were governed by franchise restrictions. The interstate fares involved in this complaint are admitted by complainant to be reasonable and are not questioned by counsel for the intervening cities of Bellaire and Martin's Ferry. The 10-cent interstate fare between Wheeling and Bellaire produced earnings of 1.23 cents per mile, between Wheeling and Martin's Ferry 1.75 cents per mile, and the 5-cent intrastate fare between Bridgeport and Bellaire 0.56 cent per mile, as compared with average earnings on the entire system of 1.83 cents. In the light of the evidence of record, the interstate fares between Wheeling and Martin's Ferry and Wheeling and Bellaire must be regarded as reasonable, and the intrastate fare of 5 cents between Martin's Ferry and Bellaire is unduly low.

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The Brilliant division of the traction company involved in the Wellsburg complaint extends along the Ohio River on the Ohio side from Steubenville through Mingo Junction to Brilliant. At Steubenville the traction company's lines cross the river and diverge at East Steubenville, one line running north to Weirton and the other south through Wellsburg and Wheeling to Moundsville. The fare from Steubenville to Wellsburg, which is directly across the river from Brilliant and 7.3 miles distant from Steubenville, including constructive mileage, at the date of hearing was 20 cents. The fare from Steubenville to Weirton was 15 cents and the distance 5.7 miles, including constructive mileage. The fare between Steubenville and Brilliant, a distance of 7.64 miles, is 10 cents, and it is this lower intrastate fare which is alleged to result in undue prejudice.

No appearance was entered on behalf of the Wellsburg complainant, the record indicating that at the time of the hearing he was ill. The issue was fully presented by the traction company and by the intervening Ohio cities which contend that the Steubenville company is an electric street railway not subject to our jurisdiction.

The traction company maintains no ticket offices in the towns served by it and no through tickets are sold on the cars. Fares are collected in each zone, of which there were at the date of hearing two between Brilliant and Steubenville and four between Steubenville and Wellsburg. Tickets good for a zone ride at that time were sold at the rate of 11 for 50 cents. Subsequent to the hearing in this cause the divisions of defendant's line here involved were rezoned and the interstate rates increased in accordance with our finding in *Local and Joint Passenger Fares, supra*. There are at present five zones between Steubenville and Weirton which produces a cash fare of 20 cents and a ticket fare of 16½ cents, and six zones between Steubenville and Wellsburg which produces a cash fare of 24 cents and a ticket fare of 20 cents.

It has been found impractical to operate through cars between Brilliant and points in West Virginia, and interstate travelers are required to change cars at Steubenville. The published fare of the traction company for that portion of the interstate trip between Brilliant and Steubenville at the date of the hearing was 15 cents, but because of the operating conditions the traction company is apparently unable to collect more than 10 cents, the amount fixed in the franchises granted its predecessors by the municipalities of Steubenville, Mingo Junction, and Brilliant. Interstate passengers on this division therefore are carried at fares lower than those shown in the traction company's tariffs.

Our jurisdiction over the traction company is not questioned. Since 1911 it has had on file tariffs naming its fares and charges for

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transportation of passengers and property between West Virginia and Ohio points. The Steubenville company since 1914 has filed its tariffs covering like transportation between Steubenville and West Virginia points, and in *City of Steubenville, Ohio, v. Tri-State R. & E. Co.*, 38 I. C. C., 281, was held to be subject to the jurisdiction of this Commission. Counsel for the intervening Ohio cities contends that the Steubenville company was incorporated as, and now is, a passenger street railway company, and that the agreement of October 31, 1918, did not change its status so as to subject it to our jurisdiction.

The Steubenville, Mingo & Ohio Valley Traction Company, hereinafter called the Mingo line, was incorporated July 25, 1899, to build and operate a street railway within Jefferson county, Ohio, and on that date was given franchise permission to operate a street railroad on certain streets of the city of Steubenville. Similar permission had been granted the same individuals on July 20 by the village of Mingo Junction. Analysis of the articles of incorporation and ordinances shows that the real aim was the construction of an electric railway line between Steubenville and Mingo Junction. The Steubenville ordinances referred to the proposed road as the "Steubenville and Mingo route" and provided that the fare "between the northern terminus in the city of Steubenville and the southern terminus in the village of Mingo Junction shall not exceed five cents." Another provision was that the persons or corporation securing the franchise "shall not commence the construction of any part thereof within the corporate limits of the city of Steubenville until such party, parties, or corporation shall have constructed and completed an electric street railway from the village of Mingo Junction, Ohio, to the southern terminus of the above described route." The Mingo Junction ordinance established a "street railroad route for passengers, baggage, and freight * * * said route herein described being a part of the proposed route from Mingo Junction to Steubenville," and fixed the fare for a continuous trip between Mingo Junction and Steubenville at 5 cents. On May 14, 1901, a franchise was granted the Mingo line permitting the building of an electric street railway to connect Mingo Junction and Brilliant, and fixing the cash fare between those villages at 5 cents. The Steubenville company was incorporated May 3, 1901, under the general corporation laws of Ohio for the purpose of "building, acquiring, and maintaining an electric street railroad for the transportation of passengers, packages, express matter, U. S. mail, baggage, and freight upon the highways and its own private right of way, between a point in Steubenville, Jefferson County, to a point within Martin's Ferry, 60 I. C. C.

Belmont County." The incorporation of the Mingo line and Steubenville company, and the granting of the Steubenville, Mingo Junction, and Brilliant franchises were all steps in a plan to connect those communities and others by an electric railway line. The line between Steubenville and Martin's Ferry was actually built except for a short piece of track between Brilliant and Rayland. The Steubenville company later acquired all the rights, properties, and franchises of the Mingo line.

Counsel for the intervening Ohio cities lays great stress upon the words "electric street railroad" or "street railway" used in the articles of incorporation and franchises, and argues that the Steubenville company is a street railway of the type referred to in *Omaha Street Ry. v. Int. Com. Comm.*, 230 U. S., 324, and as such is not subject to our jurisdiction. This contention we think lacks merit.

The city of Steubenville had power to establish a "street railroad route" only within the confines of that city. This was true also of the villages of Mingo Junction and Brilliant. Authority to construct and operate a line of electric railway between Steubenville and Mingo Junction was acquired from the board of county commissioners of Jefferson county. Considered separately the Steubenville company's rails within the limits of the three municipalities may constitute electric street railways, but the rails between Steubenville and Brilliant constitute what is commonly recognized as an interurban railroad. Such a railroad is defined in the Ohio statutes as one "engaged in the business of operating a railroad wholly or partly within the state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state" and which uses electricity or a motive power other than steam. It is clear that under these statutes the Steubenville company is not now an "electric street railroad," although at the time of its incorporation it may have been so designated. Nor can it be said to be a "street electric passenger railway," as that term is used in section 15 of the interstate commerce act. In *Jurisdiction over Urban Electric Lines*, 33 I. C. C., 536, the Commission said:

It is pointed out in behalf of almost all of the companies represented by briefs filed that their organizations were effected under state laws relating to street railways, without much stress upon the fact that in consequence of their present development, which, it may be assumed, has been reached by the exercise of legal rights, they are carrying on much more than a street railway business.

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At page 539:

It may be that the framers of the various statutes relating to interstate commerce by railroad, under which this Commission operates, were chiefly concerned with the steam railroads, but it would seem that the * * * prevention of such abuses as may arise in their operation and management are also matters of concern to Congress, and unless it can be more clearly shown that there is something in the purpose of one or the other of the acts that would exclude electric lines, we must continue to hold, with the qualifications resulting from the decision in the *Omaha Case, supra*, and the amendment to section 15 of the act to regulate commerce, which would exclude "street electric passenger railways" that electric railways engaged in interstate transportation are subject to our jurisdiction.

The facts that the Steubenville company was incorporated as an "electric street railroad," that its rails are laid entirely within Ohio, and that for operating reasons no through cars are run or through tickets sold, do not stamp the service it now performs as purely intrastate. Whether it be regarded as a separate legal entity, or as a division of the traction company, which owns all its capital stock, it is an electric railway engaged in interstate transportation and is subject to our jurisdiction. In reaching this conclusion we are not called upon to determine whether the agreement filed of record is an operating agreement or lease; to pass upon the legal effect of that document; or inquire whether either or both companies exceeded their corporate powers by entering into it. Under some intercorporate arrangement apparently recognized by these municipalities and the state of Ohio the property of the Steubenville company for nearly two years has been operated by the traction company, as a division of its system, and for more than a year the traction company, which is subject to our jurisdiction, has had on file with us tariffs naming fares for transportation of passengers between points on that division and West Virginia points. The traction company also files with the Public Utilities Commission of Ohio the intrastate fares alleged to result in unjust discrimination. If such discrimination be found it lies within the power of this Commission to require the traction company to remove it.

The complaint differs from many cases brought to our attention in that the interstate fares are not alleged to be unreasonable, but only that the lower state fares are discriminatory, the "traffic and operating conditions" of state and interstate travel being "substantially equal." These allegations are admitted by the defendant, and the only testimony to the contrary is that the patrons of the Brilliant division because of certain operating difficulties have been subjected to some inconvenience; that the cars used on that division are of a different type; and that the service is less frequent than the interstate service.

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The average fare per mile from Steubenville to Brilliant on a cash basis at the date of hearing was 1.31 cents, and on a ticket 1.19 cents; from Steubenville to Wellsburg the average cash and ticket fares were, respectively, 2.21 cents and 1.73 cents per mile. The average fare per mile for the traction system was 1.88 cents. The Steubenville company has never paid a dividend, and the last dividend paid by the traction company was for the year 1917. The net income of the system for the year 1919 was \$31,740.27, but it was testified that had the proper amounts for deferred maintenance and depreciation been entered on the books a deficit of \$143,127.73 would have resulted. The Brilliant division was operated at a loss of nearly \$15,000. From an examination of the record it is clear that the interstate fares between Wellsburg and Steubenville and between Weirton and Steubenville are reasonable and the intrastate fare between Brilliant and Steubenville is unduly low.

Upon consideration of the whole record we are of opinion and find that the interstate passenger fares of the Wheeling Traction Company between Martin's Ferry and Wheeling, between Bellaire and Wheeling, between Steubenville and Wellsburg, and between Steubenville and Weirton are just and reasonable fares for interstate transportation over defendant's lines between those points; and that the maintenance of intrastate fares between Martin's Ferry and Bellaire and between Steubenville and Brilliant lower than the just and reasonable interstate fares has resulted and will result in undue prejudice to persons traveling in interstate commerce over defendant's lines in the state of Ohio and between points in the state of Ohio and the above-mentioned points in the state of West Virginia; in undue preference of and advantage to persons traveling intrastate over defendant's lines between the points here involved in Ohio; and in unjust discrimination against interstate commerce.

We further find that, whether the aforesaid passenger fares pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services are performed by the defendant under substantially similar circumstances and conditions.

We further find that said undue prejudice and preference and unjust discrimination can and should be removed by fixing the intrastate passenger cash fare between Martin's Ferry and Bellaire at not less than 16 cents, and the ticket fare at not less than 13½ cents, and fixing the intrastate passenger cash fare between Steubenville and Brilliant at not less than 20 cents and the ticket fare at not less than 16½ cents.

An appropriate order will be entered.

ARCHISON, *Commissioner*, dissents.

No. 11158.

DEWEY PORTLAND CEMENT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, ET AL.*Submitted October 22, 1920. Decided February 26, 1921.*

Rates on natural stone or grinding pebbles, in carloads, from Denver, Pueblo, Arvada, Mount Olivet, Wiggington, and Golden, Colo., to Dewey, Okla., found not to have been unreasonable or otherwise unlawful. Reasonable rates for the future from Arvada, Mount Olivet, Wiggington, and Golden prescribed.

E. H. Hogueland for complainant.*T. J. Norton* and *F. E. Andrews* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and case orally argued.

Complainant, a corporation manufacturing portland cement at Dewey, Okla., by complaint filed January 19, 1920, alleges that the rates charged on numerous carload shipments of natural stone pebbles, also known as grinding pebbles, from Denver, Pueblo, Golden, Wiggington, Mount Olivet, and Arvada, Colo., to Dewey were and are unreasonable, unjustly discriminatory, and unduly prejudicial. It further alleges that the rate charged on one shipment from Pueblo violated the long-and-short-haul provision of section 4 of the act to regulate commerce. It asks reparation on shipments moving on and after December 28, 1917, and the establishment of reasonable rates for the future. Rates are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. O. C., 220.

Pebbles are used by complainant for pulverizing the "clinker" or burnt limestone from which cement is manufactured. For about two years complainant has obtained its pebbles from various points in Colorado, where they accumulate in considerable quantities in stream beds after being washed down from the mountains. The most desirable pebbles for complainant's use are of granite, about the size of

an ostrich egg. Grinding pebbles are also obtainable in Texas and New York, and prior to the outbreak of the world war a more durable grade was imported from Europe. Iron nut punchings, crop ends clipped from iron and steel bars, and steel balls are also used in grinding cement.

Dewey is about 15 miles from the Kansas-Oklahoma line and 721 miles from Denver over the Atchison, Topeka & Santa Fe, which was the route of movement, except that one shipment was routed over the Union Pacific and Missouri, Kansas & Texas. Prior to June 25, 1918, a commodity rate of 20 cents was in effect over both routes from Denver, Pueblo, and eight other points in eastern Colorado. On that date it was increased to 25 cents pursuant to general order No. 28 of the Director General of Railroads. Most of the shipments on which reparation is sought originated at Arvada, Mount Olivet, Wiggington, and Golden, local points on the Clear Creek branch of the Colorado & Southern from 7.5 to 15.7 miles north and west of Denver. They were charged the local class-D rates to Denver plus the commodity rates beyond, except that on seven carloads from Wiggington a rate 4.5 cents less than the applicable combination was erroneously assessed.

Since 1910 grinding pebbles under various designations have been rated class D in western classification. Prior to June 25, 1918, the class-D rate to Denver was 5 cents from Mount Olivet, Wiggington, and Golden, and 4 cents from Arvada. Under general order No. 28 they were increased to 6.5 and 5 cents, respectively, for application to traffic moving beyond. The class-D rates to Dewey from Golden and Denver after the increase allowed under general order No. 28 were 48 cents and 41.5 cents, respectively. Complainant lays stress upon the fact that grinding pebbles have a value of only \$5.30 per ton at the shipping points, representing the cost of picking them up and loading them on the cars; that they load heavily in all classes of equipment; and that the risk of loss or damage is negligible. Contemporaneous commodity rates from Golden to Denver of 4.5 cents on brick and other clay products, 3.5 cents on silica and crushed stone, and 3 cents on clay are compared with the class-D rate of 6.5 cents. Prior to June 25, 1918, these commodity rates were 2.5 cents as against the contemporaneous class-D rate of 5 cents.

Complainant contrasts the rate of 25 cents from Denver and Pueblo, yielding ton-mile earnings of 8.33 mills for an average distance of 600 miles, with rates in the same general territory on various other commodities, including fire brick and spelter. A representative comparison shows rates varying from 19 to 24 cents for distances from 587 to 882 miles, yielding ton-mile earnings from 5.44 to 6.78 mills.

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The commodity rates on pebbles, clay, ore, spelter, and cement from and to points in Colorado, Oklahoma, and Kansas, in effect June 24, 1918, are computed by complainant as averaging 80.9 per cent of the corresponding class rates. It accordingly contends that as of that date the commodity rate from Denver to Dewey should not have exceeded 30.9 per cent of the contemporaneous class-D rate, or 12.5 cents, and that from the Colorado & Southern points to Denver the rate should not have exceeded 2.5 cents, the contemporaneous rate on brick, making a through rate of 15 cents. It urges also that rates in those amounts should have been increased not more than 1 cent under general order No. 28, the amount of the flat increase applied to rates on sand and gravel under that order.

Defendants contend that this traffic is not entitled to lower rates because of its comparatively recent origin, its limited volume, and the uncertainty of its continuance. With respect to the low rate on brick from Golden to Denver it is testified that there is a movement varying from four to seven cars a day, whereas pebbles have moved to Dewey at the rate of about one carload per month.

Defendants' evidence tends to show that the density of traffic on the Clear Creek branch of the Colorado & Southern is not great and that operating costs are relatively high. Beyond Golden the branch is narrow gauge, but between Golden and Denver it has a three-rail track and both narrow and standard gauge equipment can be used. It is testified that an empty car movement is necessary in handling shipments of pebbles from Golden, Wiggington, Mount Olivet, and Arvada, and that because of physical conditions comparatively few joint rates are published from points on this branch and commodity rates are not published except where the volume of movement is considerable.

The following was submitted by defendants to show that the rate from Denver, Pueblo, and other Colorado points to Dewey compares favorably with other commodity rates on grinding pebbles in western territory:

From—	To—	Dis- tances.	Rates.	Earnings per ton- mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Denver, Pueblo, etc.....	Dewey, Okla.....	1800	25	8.33
St. Louis, Mo.....	Fort Worth, Tex.....	722	34.5	9.55
Kansas City, Mo.....	do.....	507	28	11.04
Pulliam, Tex.....	Dewey, Okla.....	805	37.5	9.81
New Orleans, La.....	do.....	882	55	12.33
Do.....	Ada, Okla.....	647	49	15.14
Denver, Colo.....	Bonner Springs, Kans.....	628	25	8.02

¹ Average distance.

Prior to December 28, 1917, there had been no shipments of grinding pebbles to Dewey. One carload moved on that date, 9 in 1918.
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and 15 in 1919. Of these, three originated at Denver and one at Pueblo. Complainant asserts that shipments will continue to increase, but the record shows that the volume of future movement must be regarded as conjectural.

Complainant's evidence does not establish unjust discrimination or undue prejudice, and the averment of a fourth section violation is conceded to be unfounded. A detailed statement of the shipments upon which reparation is sought indicates both undercharges and overcharges, which should be promptly adjusted.

We find that the rates assailed were not unreasonable or otherwise unlawful, but that for the future the rates from Arvada, Mount Olivet, Wiggington, and Golden will be unreasonable to the extent that they may exceed 28 cents per 100 pounds plus the increase authorized in *Increased Rates, 1920, supra*.

An appropriate order will be entered.

GO I. C. C.

No. 11256.

PROCTER & GAMBLE MANUFACTURING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted November 16, 1920. Decided February 26, 1921.

Rate on silicate of soda, in tank-car loads, from Rahway, N. J., to Port Ivory, Staten Island, N. Y., found to have been unreasonable. Reparation awarded.

H. Ignatius for complainant.

Adams Dodson for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing soap and soap powders at Port Ivory, Staten Island, N. Y., alleges that the rate of 12 cents charged on 52 tank-car loads of silicate of soda shipped between August 17 and September 15, 1919, from Rahway, N. J., to Port Ivory was unjust, unreasonable, and unduly prejudicial to the extent that it exceeded 5.5 cents. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

Silicate of soda is a raw material of low value and loads heavily. It is used in the manufacture of soap and for coating the inside of oil barrels in order to make them proof against leakage. The shipments moved over the Pennsylvania in connection with the Staten Island Rapid Transit Company, 6.4 miles. They aggregated 4,909,800 pounds and freight charges of \$5,891.75 were collected at the applicable fifth-class rate of 12 cents.

The plant of the consignor at Rahway was completed and operations commenced August 1, 1919. It was testified that the consignor requested the Pennsylvania to establish a commodity rate to Port Ivory, and that on August 22, 1919, complainant made a similar request. A commodity rate of 5.5 cents was made effective September 18, 1919.

At the average weight of the shipments, 94,400 pounds, the 12-cent rate yielded \$118.28 per car and \$18.27 per car-mile, and the 5.5-cent rate would have yielded \$51.92 per car and \$8.37 per car-mile.

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Complainant compares these rates with commodity rates of 5.5 cents on silicate of soda from Chrome, N. J., to Port Ivory, 21 miles, 12 cents from Marcus Hook, N. J., to Port Ivory, 94 miles, 6 cents from Barberton, Ohio, to Akron, Ohio, 7 miles, and 7 cents from Barberton to Orville, Ohio, 17 miles.

We find that the rate assailed was unreasonable to the extent that it exceeded 5.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$3,191.36, with interest.

An appropriate order will be entered.

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No. 11361.

FRENCH LICK SPRINGS HOTEL COMPANY
v.
AHNAPEE & WESTERN RAILWAY COMPANY ET AL.

Submitted November 9, 1920. Decided March 1, 1921.

Rates and ratings maintained in western classification territory on drugs or medicines not otherwise indexed by name found applicable to shipments of concentrated Pluto water but unreasonable to the extent that they exceed the rates and ratings contemporaneously maintained on mineral water, not carbonated, and analogous commodities taking the same rates.

George N. Brown and Brown & Boyle for complainant.

H. C. Bush and Robert W. Fyfe for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

The complainant alleges that the ratings and rates applied by defendants on shipments of Pluto water in carloads and less than carloads from French Lick, Ind., to points in western classification territory, and between points in that territory, are unreasonable, unjustly discriminatory, and unduly prejudicial in that they exceed the ratings and rates applicable to mineral water not carbonated.

Pluto water is described by the Indiana State Board of Health as "an evaporated solution of the water from the Pluto spring obtained by a process of condensation and fortified with some of the natural constituents of the water." In preparing the water for shipment it is first pumped from the spring to vats, where it is boiled, concentrated, and freed from certain gases that if allowed to remain would cause discoloration and render it unpalatable. Six per cent by weight of magnesium sulphate, or epsom salts, and sodium sulphate, or Glauber's salts, is then added, after which the water is cooled, filtered, and bottled. It is bottled in 8-ounce bottles packed 50 to the case, weighing 75 pounds, and in 23½-ounce bottles packed 34 to the case, weighing 91 pounds. Over 90 per cent of the shipments are in carloads of 40,000 pounds or over.

When complainant purchased the property in 1901 shipments of Pluto water averaged about 15 or 20 cases per day. The present

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plant, built in 1914, has a capacity of three carloads per day. In 1919, 456 carloads and 14,925 cases in less than carloads were shipped, on which freight charges aggregating \$107,343.99 were paid. Until July, 1917, the price received for a case of the large size was \$6.50 and of the half pints, \$5; the present prices are \$7.50 and \$7, respectively. The water sells at retail for 45 cents for a large bottle and 20 cents for a small bottle.

For more than 25 years Pluto water has been prepared and shipped in the manner described. Throughout this period the carriers in western classification territory have accorded it the ratings, applicable to mineral water, of fifth class, carload, and third class, less than carload. In April, 1915, the Western Classification Committee, without notice to complainant, ruled in response to an inquiry from the Western Weighing & Inspection Bureau that Pluto water should be rated as drugs or medicines, not otherwise indexed by name, or second class in carloads and first class in less than carloads. This ruling was predicated on the statement on the labels showing the article to be a concentrated spring water fortified with sodium and magnesium sulphate and an adjunct to the treatment of certain human ailments. Apparently the ruling was never followed and the commodity continued to move at the mineral-water rates. In August, 1919, the committee repeated its former ruling, again without notice to complainant, and since that time the rates provided for drugs or medicines, n. o. i. b. n., have been assessed, resulting in increases of from 60 to 180 per cent in the transportation charges. Both the official and the southern classification committees issued similar rulings after this complaint was filed, the effect of which in southern classification territory has been to deprive complainant of the commodity rates applicable on mineral water in the south and to substitute therefor the first-class any-quantity rates on drugs or medicines, in some instances more than trebling the transportation charges.

For the purpose of showing the unreasonableness of the higher ratings complainant filed an exhibit comparing the rates on mineral water and on drugs or medicines, n. o. i. b. n., from French Lick to a number of representative points in western classification territory, together with the car-mile and ton-mile earnings. This exhibit shows that to Texas common points, for example, the rate on carloads would be increased from 79.5 cents, the commodity rate applicable to mineral water, to \$1.695, an increase of 113 per cent; to Pacific coast points from \$1.19 to \$2.125, an increase of 78 per cent; to Denver, Colo., from 68 cents to \$1.755, an increase of 158 per cent; and to Little Rock, Ark., from 82 cents to 89.5 cents, an increase of 180 per cent. The rates given are per 100 pounds and are those in effect prior to

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the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. It is asserted that if the medicine rates continue to be assessed complainant will be unable to ship its product throughout the greater part of western classification territory but will be confined to points located within a relatively short distance from French Lick.

Defendants undertake to justify the application of the drug or medicine ratings on Pluto water on the ground that by the concentration and addition of Glauber's salts and epsom salts, the former not being present in the water as it flows from the spring, complainant has converted the natural water into a medicinal preparation properly ratable with other drugs or medicines. Complainant, on the other hand, urges that the original water has the same medicinal properties, but to a less degree, and therefore argues that the character of the water has been in no way changed in the process of preparing it for shipment and sale. Defendants concede that the water in its original state is entitled to the mineral-water ratings, regardless of the fact that it is advertised and held out to the public as efficacious in the treatment of certain diseases, and complainant contends that it is equally entitled to that rating in the so-called concentrated form.

Concentrated Pluto water is advertised as a curative agent in the treatment of various ailments, such as gout and rheumatism, and particularly in the alleviation of constipation. It is not, strictly speaking, a concentrated natural spring water, but is both fortified and compounded. While it may be considered a mineral water in the sense that it is a "water naturally or artificially impregnated with mineral salts or oxides," it is nevertheless a drug or medicine and used as such. It does not necessarily follow, however, that because Pluto water, concentrated, is a drug or medicine it should move at the ratings provided for "drugs or medicines, n. o. i. b. n." This description, it will be observed, applies only on articles of a drug or medicinal character not specifically indexed by name in the classification. Natural Pluto mineral water is a medicine. It is also a mineral water, and, as mineral water is specifically provided for in the classification, it would take the rating applicable thereto.

The description "drugs or medicines, n. o. i. b. n.," is of so general a character and would include so wide a variety of articles that the carriers have found it necessary to specifically name some of them for which the drug or medicine ratings would be either too low or too high. For example, epsom salts is extensively used as a drug or medicine, although also used for other purposes, but it is rated fifth class in carloads in the western classification. Various kinds of oils are also named, among them cod liver oil, edible or medicinal, essential oils, and others which need not be enumerated. The chemi-

cal list is treated in the same manner, the ratings on chemicals, n. o. i. b. n., being substantially the same as on drugs, n. o. i. b. n.

Articles analogous to Pluto water which have been ruled upon by the Western Classification Committee as being drugs or medicines are Mir-A-Co mineral water, a compounded mineral water retailing at \$1 for 12 ounces; Co-Lo-Fax, a fortified mineral water retailing at 20 cents for four ounces; Sulfox water, a medicinal water artificially prepared; and liquid petrolatum, a medicinal mineral oil refined from petroleum. The rates applicable on shipments of liquid petrolatum were considered in *Standard Oil Co. v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 598, to which defendants refer in support of their contention that Pluto water is a medicine and ratable as such. We held in that case that liquid petrolatum was included within the classification description "patent or proprietary medicines." We did not, however, consider the reasonableness, as applied to that commodity, of the medicine rating of second class, in carloads, because not in issue. Here complainant specifically assails the reasonableness of the medicine ratings as applied to shipments of Pluto water in carloads and less than carloads.

Ratings of fifth class in carloads and third class in less than carloads are made in the western classification on such commodities as ginger ale; beverages, flavored or phosphated, n. o. i. b. n., including birch beer, root beer, or sarsaparilla; and nonalcoholic cereal beverages and malt liquors, including beer tonic, porter, or stout. The conditions affecting the rating of these commodities, particularly malt and nonalcoholic liquors, do not differ in any substantial degree from those under which Pluto water is shipped. They are packed and shipped in the same manner, weigh about the same, and are of approximately the same value. All are shipped in large quantities. From both a transportation and a classification standpoint there is no sound reason for different ratings thereon. The record contains references to numerous tariffs applying between points in western classification territory in which mineral water and the various commodities named are grouped together and move at the same rates, either class or commodity.

We find that the rates and ratings maintained by defendants in western classification territory on drugs or medicines not otherwise indexed by name, while applicable to shipments of concentrated Pluto water, are, and for the future will be, unreasonable to the extent that they exceed the rates and ratings contemporaneously maintained on mineral water and analogous commodities taking the same rates.

An appropriate order will be entered.

GO I. C. C.

No. 11447.

J. M. PEARSON

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI, KANSAS
& TEXAS RAILWAY COMPANY OF TEXAS, ET AL.

Submitted November 4, 1920. Decided February 26, 1921.

Rate on crushed stone, in carloads, from New Braunfels, Tex., to De Ridder, La., found unreasonable. Reparation awarded and measure of reasonable maximum rate prescribed.

H. S. L'Hommedieu for complainant.

J. R. Bell and *C. R. Hall* for defendants.

REPORT OF THE COMMISSION.

DIVISION 8, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 8:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a contractor and builder at Orange, Tex., alleges that the rate of 32.5 cents charged on three carloads of crushed stone shipped from New Braunfels, Tex., to De Ridder, La., was unreasonable to the extent that it exceeded the rate of 9 cents maintained on like traffic to other points in Louisiana. We are asked to establish a reasonable rate for the future and to award reparation. Rates are stated in cents per 100 pounds except as otherwise noted, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments, aggregating 184,600 pounds, moved during December, 1919, and January, 1920, over the Missouri, Kansas & Texas Railway of Texas from New Braunfels to Houston, Tex., Texas & New Orleans to Beaumont, Tex., and Texarkana & Fort Smith and Kansas City Southern to De Ridder, 345.4 miles. Freight charges aggregating \$601.87 were collected at the applicable joint class-E rate of 32.5 cents. The total charges applicable amounted to \$599.96, and there is an outstanding overcharge of \$1.91. The aggregate of the intermediate rates was lower, consisting of a joint commodity distance rate of 8 cents from New Braunfels to Beaumont, and a distance commodity rate of \$1 per net ton from Beaumont to De Ridder, which, under the rules for construction of combination rates, would amount to 12 cents. This

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departure from the provisions of the fourth section was protected by an appropriate application, which was denied by fourth section order No. 5408, but upon request of the carriers the effective date of that order was postponed pending a general readjustment of the Louisiana rates. Rates prescribed in our order in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 52 I. C. C., 105; *Same v. A. H. T. Ry. Co.*, 58 I. C. C., 310, will effect this readjustment.

Complainant relies on the scale of distance commodity rates between Shreveport, La., and points in Texas, prescribed by us in *Railroad Commission of Louisiana v. A. H. T. Ry. Co.*, 48 I. C. C., 312, hereinafter called the Shreveport scale, as increased by general order No. 28 of the Director General, in support of his contention that the rate charged from New Braunfels to De Ridder was unreasonable. When the shipments moved the rate under that scale for a distance of 345 miles, joint-line application, was 9 cents, minimum 50,000 pounds, or marked capacity of car if less than 50,000 pounds. The rate assailed yielded earnings of 18.8 mills per ton-mile, and 57.9 cents per car-mile based on the average load of 61,533 pounds. Under the 9-cent rate the ton-mile earnings would have been 5.2 mills, and car-mile earnings 16 cents. Defendants contend that the 9-cent rate would have been too low for a haul of 345.4 miles over three lines, and in support of this position present comparisons showing rates of from 12.5 to 15.5 cents on crushed stone for comparable distances between points in Arkansas, Oklahoma, Louisiana, Kansas, and Missouri. They are willing that the aggregate of intermediate rates should be applied as a joint rate.

In *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 58 I. C. C., 610, the carriers proposed a rate of 12.5 cents for a distance of 350 miles, joint-line application, on sand, gravel, and crushed stone between Natchez, Miss., and points in Louisiana west of the Mississippi River. We prescribed rates for 450 miles and less between these points the same as were contemporaneously in effect for like distances between Shreveport, La., and points in Texas, carload minimum 80,000 pounds, or marked capacity of car if less than 80,000 pounds.

We find that the rate assailed was, is, and for the future will be, unreasonable to the extent that it exceeded or may exceed the rates contemporaneously in effect on like traffic and for like distances between Shreveport and points in Texas; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged in the amount of the difference between the charges collected and those which would have accrued upon the basis herein found reasonable; and that he is entitled to reparation in the sum of \$435.73, with interest, which sum includes the overcharge mentioned.

An appropriate order will be entered.

No. 11448.¹

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

Submitted November 15, 1920. Decided February 26, 1921.

Certain carload shipments of crushed rock from Trap Rock, Pa., and of ashes or cinders from Coatesville, Pa., to Carney's Point, N. J., found to have been misrouted. Some found to have been overcharged. Reparation awarded and refund of overcharge directed.

Harvey S. Farrow for complainant.

Wm. L. Kinter for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing explosives at Carney's Point, N. J., by complaints seasonably filed, as amended, alleges that, due to misrouting, unjust and unreasonable charges were collected for the transportation to Carney's Point in August and September, 1918, of 80 carloads of crushed rock from Trap Rock, Pa., and 44 carloads of ashes or cinders from Coatesville, Pa. It asks reparation. Rates will be stated in amounts per net ton.

The rails of the Philadelphia & Reading, hereinafter called the Reading, extend from Trap Rock and Coatesville to Wilmington, Del. Carney's Point is on the Delaware River opposite Wilmington, and is reached by the Reading from the latter point by means of car floats. The shipments were routed by the shipper "P. & R." All except three were diverted by the Reading to the Pennsylvania at Wilmington, and transported by the latter and the West Jersey & Seashore via the Delaware River bridge to Carney's Point. Two cars were diverted to the Pennsylvania at Coatesville, but charges were apparently collected on the same basis as on the cars diverted at Wilmington. One car moved as routed.

When the shipments moved the rates over the Reading to Wilmington and Carney's Point were, on crushed rock from Trap Rock, 80 cents and \$1.50, respectively, and on ashes or cinders from Coates-

¹ This report also embraces No. 11448 (Sub-No. 1), Same v. Same.
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ville 90 cents and \$1.10, respectively. The applicable rates of the Pennsylvania from Wilmington to Carney's Point were \$1.40 on crushed rock and \$3.60 on ashes. Total charges were collected on the basis of the Reading's rates from origin to Carney's Point in addition to the charges of the Pennsylvania, which apparently were incorrectly assessed in some instances. The shipments were, therefore, overcharged.

When the shipments were diverted there were in Wilmington territory about 235 pier cars containing munitions for foreign governments and 125 cars for delivery to industries. The regional director of the Railroad Administration had directed that cars be moved without delay in order to effect relief. The diversion to the Pennsylvania was made without complainant's consent, apparently in compliance with general order No. 1 of the Director General of Railroads, which required that routing designated by shippers be disregarded when speed and efficiency of transportation might be promoted. In instances where, in compliance with this order, shipments were sent by a route over which the rates were higher than over the route designated by the shipper we have, by our order of April 26, 1918, authorized the participating carriers to adjust the charges to the basis applicable over the route designated.

We find that all but one of the shipments were misrouted; that complainant paid and bore the charges thereon; and that it was damaged and is entitled to reparation, with interest, in the amount of the difference between the charges paid and those which would have accrued if the shipments had been forwarded over the routes designated. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice. Any overcharge on the shipment which moved as routed should be promptly refunded, with interest.

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No. 11914.

NEVADA RATES, FARES, AND CHARGES.
IN THE MATTER OF INTRASTATE RATES, FARES, AND
CHARGES OF THE SOUTHERN PACIFIC COMPANY
AND OTHER CARRIERS IN THE STATE OF NEVADA.

Submitted February 1, 1921. Decided March 8, 1921.

Certain rates, fares, and charges required by state authority to be maintained by the respondents within the state of Nevada found to be lower than the corresponding interstate rates, fares, and charges authorized by *Increased Rates, 1920*, 58 I. C. C., 220, and to be unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce.

L. B. Fowler, J. F. Shaughnessy, W. H. Simmons, James G. Scrugham, Benson Wright, and Fred W. Feldt for state of Nevada and Public Service Commission of Nevada.

Fred Wood, J. R. Bell, H. C. Booth, Fred E. Pettit, jr., and James S. Moore, jr., for respondents.

E. H. Walker for Reno Chamber of Commerce, Reno Rotary Club, Greater Carson Club, Churchill County Commercial Club, and Fallon Commercial Club.

C. H. Stevens for Verdi Lumber Company; *B. J. Henley* and *H. M. Rives* for Nevada Mine Operators' Association; *H. R. Cooke* for Round Mountain Mining Company, Fairview Extension Company, and Fairview Round Mountain Mines Company; and *S. W. Bedford* for Mason Valley Mines Company.

John E. Benton for National Association of Railway and Utilities Commissioners.

REPORT OF THE COMMISSION.

HALL, Commissioner:

In Ex Parte 74, *Increased Rates, 1920*, 58 I. C. C., 220, we authorized increases in rates, fares, and charges to be made by all steam railroads subject to our jurisdiction in the group which serves the state of Nevada. These increases within that group, designated by us as the mountain-Pacific group, were 25 per cent in freight rates; 20 per cent in passenger fares and charges, excess-baggage charges, and rates on milk and cream; and a surcharge upon passengers in sleeping and parlor cars amounting to 50 per cent of the charge for 60 I. C. C.

space in such cars, to accrue to the rail carriers. Increased rates, fares, and charges pursuant thereto were established generally, effective on August 26, 1920.

Prior to our decision in *Increased Rates, 1920, supra*, the steam railroads operating in the state of Nevada, except the Nevada Northern Railway Company, had applied to the Public Service Commission of that state, hereinafter referred to as the Nevada commission, for permission to make increases in their intrastate rates, fares, and charges similar to those which should be authorized by us on interstate traffic. After our decision the Nevada Northern petitioned the Nevada commission for permission to make the same increases in its intrastate rates, fares, and charges as had been authorized by us with the exception of intrastate rates on ores between points on what is known as its "Mines-Smelter" branch.

Hearing was held by the Nevada commission, and all of the evidence before us in Ex Parte 74 was made part of the record before it. By report and order of September 17, 1920, the carriers' applications were denied. Thereafter certain carriers by steam railroad operating in Nevada filed with us a petition in their own behalf, and on behalf of all steam railroads that might be made parties, for relief in accordance with the provisions of section 13 of the interstate commerce act. This proceeding, to which all railroads subject to our jurisdiction in the state of Nevada have been made parties respondent, was then instituted on our own motion. There are no electric roads operating in Nevada. The record in Ex Parte 74 has been made part of the record in this case.

Nevada is the sixth largest state in the Union and the least populous. The following table gives comparable data, based on the 1920 census, as to most of the states included in whole or in part in the mountain-Pacific group:

State.	Area in square miles.	Population.	Population per square mile.	Population per mile of railroad.
Montana.....	146,997	547,593	3.71	110.55
Idaho.....	83,535	481,826	5.14	149.76
Wyoming.....	97,914	194,402	1.98	102.02
Colorado.....	103,948	930,326	8.95	157.99
New Mexico.....	122,634	366,247	2.93	117.08
Arizona.....	113,956	333,273	2.91	140.17
Utah.....	84,990	449,446	5.29	216.49
Nevada.....	110,960	77,407	.699	33.38
Washington.....	69,127	1,388,316	19.67	216.23
Oregon.....	94,969	783,285	8.10	262.54

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I. PASSENGER FARES.

The following table shows the present intrastate and interstate bases of fares in Nevada:

Railroads.	Rate per passenger-mile.	
	Intrastate.	Interstate.
Southern Pacific—Main line.....	\$0.04	\$0.048
Western Pacific—Main line.....	.045	.054
Nevada Northern.....		
Southern Pacific—Nevada & California branch.....		
Southern Pacific—Fernley branch.....	.05	.06
Los Angeles & Salt Lake—Main line.....		
Virginia & Truckee.....		
Tonopah & Tidewater.....		
Tonopah & Goldfield.....		
Los Angeles & Salt Lake—Branch lines.....	.06	.072
Western Pacific—Reno branch.....		
Bullfrog Goldfield.....		
Nevada Copper Belt.....	.08	1.006
Nevada Central.....	.0968	1.119
Eureka Nevada, operated by the Nevada Transportation Company.....	.10	No fares.

* Joint interstate fares applying from points on these lines have not been increased.

Prior to August 26, 1920, the level of interstate and intrastate passenger fares in Nevada had generally been the same. Their history may be sketched in a brief and general way as follows:

Prior to July 1, 1906, the passenger-fare basis on the main line of the Southern Pacific was 5 cents; on the branch lines from Hazen to Churchill, 7 cents; Churchill to Mina, 6.5 cents; and Mina to the state line, 6 cents. On that date the main-line fares were reduced to a basis of 4 cents per mile, while all the branches were placed on a 5-cent basis. These bases continued in effect until August 26, 1920, when the interstate fares were increased 20 per cent.

In 1907 the Nevada commission instituted a proceeding looking toward reduction in the main-line fares of the trunk lines to 3 cents per mile. As a compromise the carriers established round-trip fares between Reno and San Francisco, Sacramento, and a few other points in northern California on a basis of 80 per cent of double the one-way fare, and also established round-trip fares in Nevada on a basis of 85 per cent of double the one-way fare.

On January 24, 1913, the Nevada commission entered an order reducing the main-line fares of the Southern Pacific to 3 cents per mile and the branch-line fares to 4 cents per mile. The United States district court enjoined this order without passing upon the reasonableness of the fares. It was subsequently withdrawn and the proceeding discontinued. In 1914 the Nevada commission instituted another proceeding relative to passenger fares in Nevada. Hearings were had and the case submitted. No decision has been rendered. Recently the Nevada commission cited the Southern Pacific, Western

Pacific, and Los Angeles & Salt Lake to show cause why their intrastate fares should not be reduced to a "just and reasonable basis." At the hearing the chairman of the commission stated that he considered 3.6 cents per mile a just and reasonable basis.

The existing intrastate fares of the Los Angeles & Salt Lake and the Western Pacific, which are the same as the interstate fares in effect on August 25, 1920, were established on the opening of those lines in 1905 and 1910, respectively. Because of competition the Western Pacific established the fares then applying on the Southern Pacific.

The first passenger fares of the Tonopah & Goldfield were established in 1905 and were based on 10 cents per mile. On July 1, 1906, this basis was reduced to 8 cents, and on January 1, 1907, to 6 cents. The 6-cent basis in effect on the Tonopah & Tidewater and the Bullfrog Goldfield was established in 1907 and 1908, respectively.

Fares on the Nevada Central have been uniformly on a basis of 9.68 cents per mile; on the Nevada Copper Belt 8 cents, established in 1910; and on the Nevada Northern 4.5 cents, prescribed by the Nevada commission in 1912. This road also publishes intrastate commutation fares between McGill, Ely, and other points for the benefit of employees of the Nevada Consolidated Copper Company. The basis of the Virginia & Truckee is about 5 cents, representing reductions made in 1911 and 1917.

It will be seen that for the most part the fares in effect on August 25, 1920, had been in effect for many years and had been established during a period of relatively low operating costs.

Prior to federal control the carriers issued scrip books good for both interstate and intrastate transportation, one for \$90 at the rate of 2.5 cents per mile and one for \$40 at the rate of 3 cents per mile. Full fare was paid in purchase of these books, but under appropriate tariff provisions refund was made to the bases stated. The extent to which these scrip books were used does not appear of record. One conductor on a main-line Southern Pacific train testified that they have not been used to any considerable extent in recent years.

Under general order No. 28 of the Director General of Railroads the use of scrip books and all round-trip fares, interstate and intrastate, was abolished throughout the country, effective June 10, 1918. The Nevada commission claims that this resulted in unreasonable passenger fares in Nevada. At the hearing its chairman admitted that while he never considered the main-line fares in Nevada to be just and reasonable the granting of the round-trip fares and use of the scrip books resulted in "somewhere near a just and reasonable rate."

In New Mexico and California the intrastate fares have been increased 20 per cent, but in Nevada, Arizona, and Utah the increase was denied. The intrastate passenger revenue in Nevada of respondents for the year ended December 31, 1919, amounted to \$719,237.58, of which \$630,836.28 was received on a basis of 5 cents per mile or less. Most of the remainder was collected by the Tonopah & Goldfield on a basis of 6 cents. For the eight months ended August 31, 1920, the corresponding revenue was \$499,590.86, of which \$437,638 was on a basis of 5 cents per mile or less, and, as in 1919, most of the remainder was received by the Tonopah & Goldfield on a basis of 6 cents per mile.

These respondents estimate that if the present intrastate fares are continued for one year, and if the intrastate traffic during that year is the same as in the calendar year 1919, the direct loss of revenue through failure to secure the 20 per cent increase in intrastate fares will approximate \$145,000. Estimates based on the traffic for the first eight months of 1920 indicate that their annual "loss" would approximate \$150,000.

All of respondents except the Nevada Transportation Company, operating the Eureka Nevada Railway, a narrow-gauge road, carry both intrastate and interstate passengers on the same trains with the same service and accommodations. The intrastate passenger paying the lower fare rides in the same car with the interstate passenger who pays the higher fare. The evidence shows that there are no traffic or transportation conditions in the state of Nevada which justify a lower basis of fares for intrastate transportation than for interstate. On the contrary, the average length of passenger haul interstate is several times the intrastate, as will be seen from the following table for 1919:

Respondent.	Average haul.	
	Intrastate.	Interstate.
	<i>Miles.</i>	<i>Miles.</i>
Southern Pacific Co.—Pacific system.....	72.95	305.88
Western Pacific Railroad.....	45.52	279.17
Los Angeles & Salt Lake Railroad.....	26.35	212.98
Bullfrog Goldfield Railroad.....	61.84	78.51
Nevada Central Railroad.....	77.01	77.01
Nevada Copper Belt Railroad.....	12.28	14.08
Nevada Northern Railway.....	12.51	120.45
Tonopah & Goldfield Railroad.....	69.57	67.42
Tonopah & Tidewater Railroad.....	11.19	29.04
Virginia & Truckee Railway.....	27.45	72.95

Similar evidence covering the eight months ended August 31, 1920, shows approximately the same result.

It should be observed that the average interstate haul of the lines that cross the state includes not only traffic to or from points in Nevada but the haul in Nevada on traffic that crosses the state.

The train-mile earnings from passenger traffic are said to be naturally higher in states more densely populated than Nevada. It is also shown that the earnings per train-mile from passenger traffic are greater on through interstate trains crossing Nevada than on local trains within Nevada. An exhibit shows earnings on certain local branch-line trains of the Southern Pacific ranging from 14 cents to \$1.62 per mile, while earnings on representative through interstate trains for the first 10 months of 1920 range from \$2.79 to \$3.60 per mile. The greater part of intrastate passengers on the main lines in Nevada are carried on through interstate trains.

To show that, so far as passenger traffic is concerned, local stations in Nevada are maintained principally for intrastate business, respondents introduced exhibits as to ticket sales. Thus, during three months ended October 31, 1920, the total ticket sales at 34 stations of the Southern Pacific were, interstate 6,342, intrastate 23,700. This does not include Reno, where interstate ticket sales predominate. The ratio of intrastate to interstate is even greater on the short lines in Nevada.

The record contains many illustrations of the way in which the Nevada intrastate fares have the effect of reducing the earnings on interstate traffic, or rather on what would be interstate traffic if it were not for the difference in fares. Passengers coming from or destined to points outside the state find it cheaper to pay the intrastate fare within Nevada and the interstate fare beyond the border than to pay the through interstate fares for the whole journey. Station agents and conductors testified that this practice was growing and difficult to eliminate. The situation is aggravated by the fact that holders of scrip books which represent so much cash can defeat the through interstate fares without leaving the train. This practice tends to break down the interstate adjustment.

The difference in the level of the fares tends to prejudice localities outside the state of Nevada. Reno is by far the largest jobbing center in the state. Prior to August 26, 1920, the one-way fares from Goldfield to Reno and San Francisco were respectively \$14.15 and \$22.65. At the present time they are \$14.15 and \$27.18, respectively. No round-trip fares are now in effect. A passenger can go from Goldfield to Reno and return for \$28.30. To San Francisco and return he must pay \$54.36, a difference in favor of Reno of \$26.06, whereas prior to August 26 the difference in favor of Reno was \$17. It appears that during the summer season round-trip fares less than double the one-way fare have been published from Goldfield to San Francisco. Again, Palisade, Nev., is approximately the same distance from Reno and Salt Lake City, and prior to August 26, 1920, the fares were on the same basis. Now the fare from Palisade to

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Salt Lake is on a basis 20 per cent higher than that of the fare to Reno.

The Western Pacific and the Southern Pacific have many stations common to both in eastern Nevada. From Reno to these points the route of the Southern Pacific is intrastate, but that of the Western Pacific is for about 50 miles in California. As stated before, the fares from Reno to these stations from the time of the opening of the Western Pacific until August 26, 1920, were approximately the same. The fares over the interstate route of the Western Pacific have been increased 20 per cent. Those over the intrastate route of the Southern Pacific to the same destinations have not, with a resulting difference ranging from \$1.41 at Winnemucca to \$2.87 at Wells. This relation of fares was made the subject of informal complaint to the Nevada commission and elicited from the chairman of that commission the following expression to complainant:

There is no good reason as we view it, why the Western Pacific should charge higher fares between Reno and other points throughout the State of Nevada than are charged by the Southern Pacific, nor do we believe that the company will desire to continue such a business policy for any great length of time. It is within the power of the Western Pacific Railroad to reduce its fares to the bases of those charged by the Southern Pacific within Nevada.

It was testified that the inevitable effect of this situation will be to force a reduction of the Western Pacific fares unless the Southern Pacific fares are increased.

What has been said with reference to passenger fares applies with equal force to the surcharge for space in Pullman or parlor cars and the excess-baggage charges. Respondents estimate that their loss due to failure to secure the surcharge will approximate \$12,500 annually based on the traffic during 1919.

The Nevada commission compared passenger fares in Nevada with passenger fares per mile in other states, but with no showing as to similarity of transportation conditions. The average revenue per passenger-mile received by the Western Pacific, Los Angeles & Salt Lake, and Southern Pacific for their systems as a whole is naturally less than that received in Nevada on account of the lower basis in California, and, in the case of the Southern Pacific, on account of the heavy commutation travel in and out of San Francisco and other bay points. The Nevada commission also submitted evidence as to passenger earnings for railway systems in various parts of the country which are of little value in this proceeding.

The record does not warrant a finding with respect to the relationship of intrastate and interstate commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, or club-car charges.

The intrastate movement of milk and cream in Nevada is negligible, and no evidence was offered with reference thereto.

II. FREIGHT RATES.

The Nevada commission admitted at the hearing that the Nevada state rates were on a just and reasonable basis prior to the increases under general order No. 28, and that it had diligently sought to harmonize those rates with rates in effect in California and elsewhere. Prior to federal control the Nevada rates had been subjected to many reductions aggregating several hundred thousand dollars annually. The further admission was made that its opinion as to the justness and reasonableness of the rates in effect in 1917 was based on a valuation hereinafter considered.

Respondents estimate that their failure to secure a 25 per cent increase in intrastate freight rates will result in annual loss of approximately \$340,000, based on the traffic for 1919, or, based on the traffic for eight months of 1920, approximately \$397,000. They show that the average haul on traffic in Nevada is much longer interstate than intrastate.

The tonnage of intrastate freight handled in several states of the mountain-Pacific group is stated as follows:

Year.	Nevada.	Arizona.	Oregon.	California.
	Tons.	Tons.	Tons.	Tons.
1912.....	212,220	190,925	1,289,365	12,825,245
1913.....	166,124	181,844	1,341,404	12,855,299
1914.....	132,462	137,269	1,686,451	12,442,115
1915.....	66,210	114,152	1,183,000	12,466,166
1916.....	75,137	305,238	1,631,685	12,963,716
1917.....	85,722	523,723	2,193,487	14,531,430
1918.....	99,008	505,876	2,572,380	13,130,808
1919.....	76,268	(¹)	2,679,557	(¹)

¹ No record was maintained during 1919 segregating interstate and intrastate traffic in California and Arizona.

Prior to August 26, 1920, class rates for application to interstate and intrastate traffic in Nevada were generally on the same basis. In *Traffic Bureau of Merchants Exchange v. S. P. Co.*, 19 I. C. C., 259, decided June 6, 1910, we prescribed a maximum scale of class rates from Sacramento, Calif., to points on the main line of the Southern Pacific in Nevada. In 1913 the Nevada commission prescribed a distance scale of class rates for application where no specific class rates were named between points in Nevada on the main line of the Southern Pacific; specific class rates between Reno, Lovelock, Winnemucca, Elko, and other main-line points on the Southern Pacific; and specific class rates between the points named and points on the branch lines of the Southern Pacific south of Hazen. The

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carriers in publishing the rates so prescribed made them applicable also to interstate traffic in cases where no specific rates were in effect. The reduction in rates to points south of Hazen resulted in reduction of rates to points on the Tonopah & Goldfield. On April 20, 1914, the Nevada commission ordered a further reduction in all rates from Reno to certain points on the Tonopah & Goldfield and this was made with specific reference to rates from California. The rates in effect June 24, 1918, on the Nevada Northern were the result of drastic reductions ordered by the Nevada commission in 1912.

In the *Goldfield Cases*, 34 I. C. C., 360, decided June 17, 1918, in discussing rates to points on the Tonopah & Goldfield, Bullfrog Goldfield, and Tonopah & Tidewater, we said at page 370:

The rates on all these lines, both from the east and from the west, were reduced in 1910 by the order of the Commission respecting class rates from Sacramento to points in Nevada, 19 I. C. C., 259. The rates formerly in effect from Sacramento to Hazen, Nev., were as follows:

Classes-----	1	2	3	4	5	A	B	C	D	E
Rates-----	129	113	102	87	78	78	34	33½	25½	25½

The order of the Commission reduced these rates to the following:

Classes-----	1	2	3	4	5	A	B	C	D	E
Rates-----	85	71	64	51	43	43	34	28	25	21

The direct effect of the order was to reduce the rates from California points to points in Nevada, but owing to the fact that many rates from eastern points were made by combination over San Francisco, Sacramento, or Los Angeles, reductions were thus brought about from eastern points to this territory. The various orders of the Nevada Railroad Commission have also had the effect of reducing the rates on some of these railroads. A rather notable case is one concerning the rates on forest products from Verdi, Nev., to Tonopah and Goldfield, which resulted in very material reductions in the rates on mining timbers and other lumber.

We found on page 376 that the rates on many commodities from various points in the United States had not been shown to be unreasonable or otherwise unlawful, and the pending complaints were dismissed.

The distance class scale in effect June 24, 1918, on the Los Angeles & Salt Lake was that established when the line was opened in 1905 and was the same for intrastate and interstate application. The operating conditions over this carrier's line in Nevada are much more severe than elsewhere, except for a severe grade between San Bernardino and Summit, Calif., about 20 miles. In Nevada it runs through desert country and a canyon about 150 miles long known as the Meadow Valley Wash. Fuel and water must be hauled from distant sources of supply, labor difficulties have been frequent, and the road has been closed for intervals ranging from 10 weeks to 6 months because of slides and washouts in the canyon.

Lumber is one of the principal commodities moving in Nevada, both interstate and intrastate. A mill at Verdi, Nev., a few miles east of the Nevada-California line, is in competition with mills in the Truckee River district of California. All these mills cut the same kind of timber and manufacture the same kinds of lumber. They have always been in the same rate group on movements to practically all points, except that to Reno, Tonopah, and Goldfield the rates from Verdi were slightly lower and to near-by California points slightly higher than from the other mills. On westbound shipments the same parity still exists, as the California intrastate rates have been increased by the same percentage as the interstate rates, but Verdi now has an advantage to points in Nevada. To the Tonopah and Goldfield district, the largest consumer of forest products in Nevada, the former advantage of Verdi over Westwood, Calif., has been increased from 2.5 cents to 14.5 cents per 100 pounds, and over Truckee from 4 cents to 16.5 cents. There is also a heavy movement of forest products to this district from Oregon and California mills, moving all rail or water to San Francisco, Los Angeles, or San Pedro, and thence by rail. It is said that the rates for this movement have always been made with relation to the rates from Verdi and the Truckee River district. In 1910 the Nevada commission reduced the rates from Verdi to Tonopah and Goldfield, thereby forcing a reduction in rates from California and Oregon. According to figures of the Nevada commission this one reduction amounted to \$89,000 annually.

Flour mills at Reno, Sacramento, Ogden, and Salt Lake City compete actively for Nevada business. The rate on flour from Reno is blanketed from Carlin, 292 miles east of Reno, to the Nevada-Utah state line. This rate is 46 cents and, prior to August 26, 1920, the rate from Sacramento was also 46 cents. To intermediate points between Reno and Carlin, the advantage of Reno over Sacramento ranged from 31 cents to 4 cents. Sacramento now pays 57.5 cents to the points blanketed east of Carlin, while Reno still enjoys the 46-cent rate, and the differentials to the intermediate points now range from 40 cents to 15.5 cents.

In *Utah-Idaho Millers & Grain Dealers Assn. v. R. R. Co.*, 42 I. C. C., 648, we found that the rates on flour from points in Utah and Idaho to destinations in Nevada and California were unreasonable and unduly preferential to the extent that they exceeded by more than 5 cents per 100 pounds the rates on wheat then in effect from and to the same points. The rates then in effect on wheat were found to be not unreasonably low. We found that the rate on flour from Ogden to San Francisco applied to a blanketed territory of destination extending east to Arenal, Nev., a distance of 550 miles.

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On August 25, 1920, the rate was 46 cents and under Ex Parte 74 was increased to 57.5 cents. The same rates generally applied from Salt Lake City. As stated before, Palisade is approximately equidistant from Reno and Salt Lake. Prior to August 26, 1920, Ogden had an advantage of 1 cent over Reno at Palisade and 5 cents over Reno at Carlin, a point just east of Palisade. On and after August 26 Reno had an advantage at Palisade of 9.5 cents and at Carlin of 4.5 cents. At Tecoma, the first station in Nevada on the Southern Pacific west of the Nevada-Utah state line Reno is now at a disadvantage of only 1 cent. The distances from Reno and Ogden to Tecoma are, respectively, 426 and 113 miles.

There are packing houses at Reno, Sacramento, Oakland, and San Francisco. From Nevada points the rates on fat cattle are generally the same to the three California points named, but to Reno prior to August 26, 1920, the differential under these points ranged from \$26 per standard 36-foot car at Tecoma to \$64 at Hazen, 45 miles east of Reno. As the rates to Reno have not been increased the differentials now range from \$57.50 per car at Tecoma to \$89.50 at Hazen. It was testified that the rates in effect prior to June 25, 1918, date of their increase under general order No. 28, had been in effect for many years.

Cyanide of potassium is consumed in considerable quantities at points in the Tonopah-Goldfield district. It is usually shipped from Perth Amboy, N. J., or Niagara Falls, Ontario. The joint through rate to Tonopah and Goldfield is \$4 per 100 pounds. To Hazen, Nev., it is \$2. The intrastate rate from Hazen to these two points is \$1.60, thus cutting the through rate 40 cents. This commodity can be loaded to capacity of the car and on a shipment of 100,000 pounds the through rate could be defeated to the extent of \$400. The Nevada commission attacks the factor south of Hazen of the joint through rate and claims that to increase the intrastate rate to \$2 would be unreasonable. No cyanide of potassium is produced at Hazen and we must look at the through rate from point of origin to final destination. In the *Goldfield Cases*, *supra*, we found that a rate of \$2.08 on this commodity from San Diego and San Francisco to Tonopah in effect during the period from January 18 to September 24, 1912, and a rate of \$1.92 in effect during the period from November 29, 1913, to December 15, 1914, had not been shown to be unreasonable. The \$2 rate from Perth Amboy and Niagara Falls to Hazen is also applicable to San Francisco and other California terminals and is said to be water compelled.

There is evidence with respect to the competitive routes of the Western Pacific and the Southern Pacific between Reno and points in eastern Nevada. It is obvious that if the intrastate rates of the

Southern Pacific are not increased the interstate rates of the Western Pacific will have to be reduced or the Western Pacific must retire from the business. The Nevada commission sought to prove that the operating conditions over this longer route are more severe than over the Southern Pacific, and that the rates should be fixed with reference to the Southern Pacific and not to the Western Pacific. It contends that if rates are reasonable over the Southern Pacific it would be unreasonable to increase them in order to allow the Western Pacific to compete on rates profitable to it. The Western Pacific did not enter Reno until 1917. It then adopted the rates in effect between Reno and points common to it and the Southern Pacific, many of which had been prescribed by the Nevada commission in 1913.

There are many illustrations of record as to the manner in which the through interstate rates can be defeated by forwarding to a Nevada point, taking delivery, and reshipping. This is not always practicable but on some commodities it could be done with considerable saving.

The Nevada mining interests urgently insist that they can not stand an increase in ore rates. The same contention was made before us in Ex Parte 74 by the chairman of the Nevada commission. The movement of ores to Nevada smelters is largely intrastate. There are smelters at Wabuska and McGill, and a mill for the treatment of ores at Millers. The smelter at Wabuska has been closed since February, 1919, because of the condition of the copper market. Prior to its closing this smelter drew ores from California and Nevada, and the rates on such ores from certain California points are now before us in No. 11396, *Mason Valley Mines Co. v. W. P. R. R. Co.* The principal intrastate movement of ores in Nevada is over the Tonopah & Goldfield and the Nevada Northern. The general manager of the Tonopah & Goldfield testified that even if authority was granted his road would not increase its ore rates, and that there was an identity of interest between the road and the principal mine served by it. No specific evidence with reference to ore rates on the Nevada Northern was offered, but in its application to the Nevada commission for authority to increase intrastate rates it excepted rates on ore. The last annual report of the Nevada Northern on file with us shows that it is controlled by the Nevada Consolidated Mining Company, which operates a mill, smelter, and several mines served by the road. The respondent carriers have not in all instances increased their interstate rates on ore as permitted in *Increased Rates, 1920, supra*, and the record does not warrant a finding of undue prejudice or unjust discrimination with respect to the intrastate rates on ore.

VALUATION.

The Nevada commission submitted evidence showing segregation of value, revenues, and expenses for the state of Nevada and the systems of the trunk line respondents as a whole with a view to showing that their mileage in Nevada is more profitable than for the systems as a whole. Expenses and earnings were allocated on a somewhat arbitrary train-mile basis. In its report denying the carriers' applications for increases the Nevada commission found that \$146,420,551.04 was the book cost value of the carriers' property in Nevada. In Ex Parte 74 the aggregate value fixed by us is said by the Nevada commission to result in a reduction of 5.7 per cent from that claimed by the carriers. Applying 5.7 per cent to the above figure we have \$138,074,571.15. The Nevada commission contends that the fair value of the carriers' property in Nevada is \$79,115,222. Nothing has been submitted in support of this figure, which seems to be an estimate of that commission in the absence of any valuation made by it. To go to the full extent claimed by the Nevada commission would ultimately result in breaking up each group fixed by us into groups bounded by state lines. In *Intrastate Rates within Illinois*, 59 I. C. C., 350, we said at page 364:

It is further urged that in *Increased Rates, 1920*, we did not find the value of any railroad property in the state of Illinois or elsewhere in the eastern or western groups as designated in that report. We were directed to prescribe rates so that in the aggregate they would yield a certain return, as nearly as may be, "upon the aggregate value of the railway property of such carriers held for and used in the service of transportation." We understand the interstate commerce act to require us to determine upon a valuation for the total property of the carriers and not for the property that might by some necessarily arbitrary method or formula be assigned to interstate traffic, and that is the course we followed in arriving at the estimated value used in *Increased Rates, 1920*.

The Nevada commission compared many class and commodity rates for hauls in Nevada with rates for hauls of similar distances in other states. Thus, comparison is made of class rates and rates on some 42 commodities from Sacramento to Greenwood, Calif., and from Boise to Doran in Idaho, which are said to represent hauls of approximately the same distance as those from Reno to Lovelock and between points on other lines in Nevada; also of Nevada rates with rates from San Francisco to many points in California; rates from points outside Nevada to points within the state; and transcontinental rates.

This and similar evidence was unaccompanied by any showing of transportation conditions or of movement of the commodities named, and is of little probative value. From tariffs on file with us it appears that Greenwood and Doran are nonagency stations.

Comparison was also made of the intrastate class rates between main-line points on the Southern Pacific and the maximum class scale prescribed by us in the *Memphis-Southwestern Investigation*, 55 I. C. C., 515, as follows:

	Classes.									
	1	2	3	4	5	A	B	C	D	E
50 miles:	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Nevada intrastate scale ¹	40	35	31	27	25	25	17	14	12	9
Memphis - Southwestern scale.....	36.5	31	26.5	22	17.5	16.5	14.5	12.5	11	9
100 miles:										
Nevada intrastate scale ¹	60	51	43	36	36	36	24	19	16	12
Memphis - Southwestern scale.....	51.5	42.5	36	31	24.5	27	20.5	18	15.5	12
150 miles:										
Nevada intrastate scale ¹	80	66	56	50	48	48	32	24	20	16
Memphis - Southwestern scale.....	66.5	56.5	46.5	40	32	35	26.5	22	20	16.5
200 miles:										
Nevada intrastate scale ¹	100	85	70	63	58	58	40	30	25	20
Memphis - Southwestern scale.....	77	66.5	54	46	37	40	31	27	23	19
300 miles:										
Nevada intrastate scale ¹	133	112	93	83	76	76	53	40	33	27
Memphis - Southwestern scale.....	96	81.5	67	57.5	46	50	38.5	33.5	29	24
400 miles:										
Nevada intrastate scale ¹	155	122	100	97	89	89	62	47	39	31
Memphis - Southwestern scale.....	111	94.5	77.5	66.5	53.5	57.5	44.5	39	32.5	28

¹ Nevada intrastate scale between main-line points on the Southern Pacific in effect June 24, 1918.

The Memphis-Southwestern scale as prescribed by us, and as used in this table, did not include the 25 per cent increase under general order No. 28. The rates within the territory in which this scale applies were later increased by 35 per cent under Ex Parte 74. No showing was made of similarity of transportation conditions in the territories where these scales are respectively applicable. It will be seen that for 100 miles and less the Nevada intrastate scale in effect June 24, 1918, did not greatly exceed the Memphis-Southwestern scale. If the increases under general order No. 28 and Ex Parte 74 were applied to this scale it would in many instances be higher than the present Nevada intrastate scale. The average haul on intrastate traffic in Nevada over the Southern Pacific in 1919 was 100.25 miles and for the first eight months of 1920 was 93.68 miles. As stated before, the Nevada intrastate scale was prescribed by the Nevada commission in 1913, and was made applicable by the Southern Pacific on interstate traffic. On June 25, 1918, it was increased 25 per cent and on August 26, 1920, it was increased 25 per cent for interstate application.

Much of the evidence in Ex Parte 74 to which the Nevada commission refers has little or no bearing on the relationship of interstate and intrastate rates within Nevada and is really put forward in support of its contention that interstate rates to and from Ne-

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vada points are unreasonable and prejudicial as compared with interstate rates to and from points in other states.

It further contends that as the carriers submitted little evidence in the hearing before it we should refer them back to it to seek their remedy. The entire record in Ex Parte 74 was before it when it denied the carriers' applications. In answer to a somewhat similar contention in *Arkansas Rates and Fares*, 59 I. C. C., 471, we said:

The desirability of concerted action of the state and federal regulatory bodies in all matters of transportation in which the power of both is involved has been given recognition in the interstate commerce act. The action of respondents in bringing the matter before us in advance of the filing of an application with the corporation commission and a determination by it renders difficult the coordinated action contemplated by Congress and deprives us of the benefit of such investigation and findings as the state authorities might have made. However, we are here confronted with practical questions for the solution of which Congress has provided a practical course of procedure by means of which substantial justice is assured. Respondents have elected to pursue that course and we are not vested with appellate power under which they might be remanded to tribunals of the state.

FINDINGS.

Following the *New York, Illinois, and Wisconsin Cases*, 59 I. C. C., 290; ib. 350; ib. 391, and upon this record, subject to the exception above noted in respect to commutation or other multiple forms of tickets, excursion, convention, or other fares for special occasions, and club-car charges, we are of opinion and find that the increases made by the respondent steam railroads, except the Nevada Transportation Company, operating the Eureka Nevada Railway, under Ex Parte 74, relating to passenger fares and excess-baggage charges, and now in effect, result in reasonable passenger fares and excess-baggage charges for interstate transportation and that the failure of said respondents to increase the standard intrastate fares and excess-baggage charges accordingly within the state of Nevada has resulted and will result in intrastate fares and excess-baggage charges lower than the corresponding interstate fares and excess-baggage charges, in undue prejudice to persons traveling in interstate commerce within the state of Nevada and between points in the state of Nevada and points in other states, in undue preference of and advantage to persons traveling intrastate in Nevada, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice, undue preference and advantage, and unjust discrimination can and should be removed by making increases in said intrastate passenger fares and excess-baggage charges which shall correspond with the increases heretofore made by said respondents as aforesaid under Ex Parte 74 and now in

effect in their interstate passenger fares and excess-baggage charges within that group.

We further find that the surcharges made by said respondent steam railroads, except the Nevada Transportation Company, operating the Eureka Nevada Railway, under Ex Parte 74 and now in effect upon passengers in sleeping and parlor cars result in reasonable charges upon passengers so traveling in interstate commerce, and that the failure of said respondents to make corresponding surcharges upon passengers so traveling in intrastate commerce within the state of Nevada has resulted and will result in intrastate charges lower than the corresponding interstate charges, in undue prejudice to persons so traveling in interstate commerce within the state of Nevada and between points in the state of Nevada and points in other states, in undue preference of and advantage to persons so traveling intrastate in Nevada, and in unjust discrimination against interstate commerce.

We further find that said undue prejudice, undue preference and advantage, and unjust discrimination can and should be removed by making surcharges upon passengers so traveling in intrastate commerce which shall correspond with the surcharges heretofore made as aforesaid under Ex Parte 74 and now in effect upon passengers so traveling in interstate commerce.

We further find, subject to the exception above noted with respect to rates on ore, milk, and cream, that the increases made by the respondent steam railroads relating to freight rates and charges under Ex Parte 74 and now in effect result in reasonable rates and charges for interstate transportation, and that the failure of said respondents to correspondingly increase their rates and charges for intrastate transportation within the state of Nevada has resulted and will result in intrastate rates and charges lower than the corresponding rates and charges maintained on interstate traffic within the state of Nevada, and between points in the state of Nevada and points in other states in undue preference of shippers of intrastate traffic within the state of Nevada, in undue prejudice to shippers of interstate traffic, and in unjust discrimination against interstate commerce.

We further find that said undue preference, undue advantage and prejudice, and unjust discrimination can and should be removed by making increases in said intrastate rates and charges as in effect July 29, 1920, which shall correspond with the increases heretofore made by said respondents aforesaid under Ex Parte 74 and now in effect in their interstate rates and charges.

We further find that, whether the aforesaid passenger fares, excess-baggage charges, surcharges, or freight rates and charges pertain to transportation in interstate commerce or to transportation in intrastate commerce, the transportation services in each instance are per-

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formed by the carriers under substantially similar circumstances and conditions. Tariffs may be made effective on not less than five days' notice.

The above findings are abundantly supported by the record, but are without prejudice to the right of the authorities of the state of Nevada or of any other party in interest to apply in the proper manner for a modification of our findings and order as to any specified intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, or charges in such a way as to contravene the provisions of the interstate commerce act.

An appropriate order will be entered.

EASTMAN, *Commissioner*, dissents.
601. C. C.

No. 10595.

INLAND STEEL COMPANY ET AL.

v.

DIRECTOR GENERAL, ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, ET AL.

Submitted December 9, 1920. Decided March 8, 1921.

Upon further hearing, finding upon reargument, 57 I. C. C., 339, that application of the same rate on iron and steel articles in carloads from Chicago, Ill., Terre Haute and Vincennes, Ind., and Pittsburgh, Pa., to Pacific ports for export is unduly prejudicial to Chicago, Terre Haute, and Vincennes, affirmed, subject, however, to increase permitted in *Increased Rates, 1920*, 58 I. C. C., 220.

Luther M. Walter and John S. Burchmore for complainants.

C. L. Lingo for Inland Steel Company.

Robert Hula for Steel & Tube Company of America.

R. C. Livingston for Interstate Iron & Steel Company.

J. N. Davis and Fred H. Wood for defendants.

REPORT OF THE COMMISSION ON FURTHER HEARING.

MEYER, *Commissioner*:

In the original report, 55 I. C. C., 462, an export rate of 60 cents per 100 pounds on iron and steel articles from Chicago, Ill., to Pacific coast ports was found not unreasonable or unduly prejudicial, and the complaint was dismissed. Upon reargument, 57 I. C. C., 339, the application of the same rate on iron and steel articles in carloads from Pittsburgh, Pa., as from Chicago, Terre Haute, and Vincennes, Ind., to Pacific coast ports for export, was found unduly prejudicial to Chicago, Terre Haute, and Vincennes to the extent that the rate from those points exceeded a rate 6.5 cents lower than that contemporaneously maintained from Pittsburgh. The Director General of Railroads was the only defendant; and as federal control had terminated no order was issued. On August 2, 1920, supplemental complaint was filed naming as defendants the carriers over whose lines the rates applied. The case was reopened. Complainants submitted no further testimony and defendants produced but one witness, who testified only as to rate changes.

Rates herein are those applicable to carload shipments, and are stated in cents per 100 pounds.

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Increased Rates, 1920, 58 I. C. C., 220, authorized the increase of the 60-cent rate, applicable from Chicago and Pittsburgh, to 80 cents effective August 26, 1920. Effective October 23, 1920, the rate from Chicago and points taking the same rate was reduced to 71 cents, but no change was made in the rate from Pittsburgh, due, it is said, to disagreement as to divisions. The present rate situation is in accord with the finding in our supplemental opinion, the difference between the Pittsburgh and Chicago rate reflecting the increase authorized in *Increased Rates, 1920*.

Defendants, however, contend that undue prejudice has not been shown, and that the complaint should be dismissed. Complainants insist that the difference in the rates must not be less than 9 cents and urge that it should be fixed at not less than 15 cents. They are interested in the relationship, not the amount of the rate.

From July 1, 1914, to April 2, 1917, the rate from Pittsburgh was 42 cents; that from Chicago, 30 cents. On the latter date the rate from Pittsburgh was increased to 45 cents, and that from Chicago, to 40 cents. On June 25, 1918, the cancellation of export rates made applicable the domestic rates of \$1.25 from Pittsburgh, \$1.125 from Chicago. On July 1, 1918, the export rate from Pittsburgh became 85 cents; that from Chicago, 75 cents. On April 21, 1919, the rates from Chicago and Pittsburgh became 60 cents, and on May 27, 1919, the rate from Minnequa, Colo., was made 50 cents, and that from Midvale, Utah, 40 cents. Under Ex Parte 74, rates from Pittsburgh and Chicago were increased 33½ per cent and rates from Midvale and Minnequa 25 per cent. On October 23 and 30, 1920, the export rates from Minnequa and Midvale were made 61 and 51 cents, respectively, and the rate from Chicago was made 71 cents, thus restoring the differences in rates, Midvale under Minnequa, and Minnequa under Chicago, which had obtained when our original decision was rendered.

This complaint was filed because of the disruption of the previously existing relationship. The testimony is clear that commercial conditions were based on the relationship and that industries had been established and prospered thereunder.

Complainants allege that as Chicago is less distant from Pacific ports than Pittsburgh, equal rates unduly prefer Pittsburgh, and point out that Chicago, normally, geographically, and by the carrier's own adjustment, has taken rates to the Pacific ports lower than Pittsburgh.

Defendants contend that blanket adjustment and equality are the normal transcontinental rate adjustment and graded rates the exception. They argue that the determination of undue prejudice solely by the difference of distance for the inland transportation ignores the fact that the controlling consideration in the movement of export

traffic to the orient from either Pittsburgh or Chicago is the water-and-rail competition via Atlantic ports; and because Pittsburgh is nearer the Atlantic ports and hence the cheaper and doubtless more expeditious route to the orient from Pittsburgh is via those ports, that they should be allowed to make depressed rates from Pittsburgh to Pacific ports. This factor has not been ignored. We appreciate that, in order to participate in the business from Pittsburgh, the defendants have made a through export rate to Pacific ports lower than we could prescribe, and we have recognized their right to meet competitive conditions, which, under the act, they could not be required to meet, provided that in doing so they do not create unjust discrimination. *The Missouri River-Nebraska Cases*, 40 I. C. C., 201, 259.

Defendants, citing *Board of Trade of Chicago v. A., T. & S. F. Ry. Co.*, 29 I. C. C., 438, 443, i. e., prejudice must ordinarily be of advantage to the one alleged to be favored, contend that no advantage to Pittsburgh has been shown. We think the showing made by defendants themselves that the export tonnage through Pacific ports from Pennsylvania from April 21, 1919, to May 31, 1919, when there was no difference in rates, was 62.1 per cent of the total tonnage from Pennsylvania and Indiana-Illinois points, makes it obvious that the export rate was of advantage to Pittsburgh.

Upon consideration of the entire record we find that our conclusion in the report upon reargument, 57 I. C. C., 339, should be, and it is hereby, affirmed; but because of changes in rates made pursuant to *Increased Rates, 1920, supra*, the rate from Chicago, and points taking same rates, Terre Haute and Vincennes, to Pacific coast ports should be made not less than 9 cents lower than the rate contemporaneously maintained to the same ports from Pittsburgh.

An appropriate order will be entered.

DANIELS, *Commissioner*, dissenting:

The application from Pittsburgh of the rate from Chicago on export iron and steel, carloads, to the Pacific confers no rate advantage on Pittsburgh which it does not already have, and will continue to have, by reason of its combined rail-and-water rates through Atlantic ports. Under section 3, prejudice to be undue and unlawful, must be a source of advantage to the party alleged to be favored. But here the advantage in rate will persist even though the Pittsburgh export rate to the Pacific be made or continued on a higher basis than the corresponding rate from Chicago. Hence the blanket-ing of the export rate from Pittsburgh and Chicago to the Pacific is not unlawful, but warranted by reason of the more acute competition at Pittsburgh.

INVESTIGATION AND SUSPENSION DOCKET No. 1240.
WATER COMPETITIVE RATES ON LUMBER.

Submitted February 23, 1921. Decided March 14, 1921.

Proposed increased rates on lumber from points in the south to eastern trunk line and New England territories found not justified. Suspended schedules ordered canceled.

Edwin A. Lucas, Charles J. Rixey, Frank W. Gwathmey, and Henry Thurtell for respondents.

Wilbur LaRoe, jr., Eric E. Ebert, W. S. Phippen, W. J. Strobel, Davies & Jones, Raymond Beebe, William A. Wimbish, W. E. Gardner, Benjamin Gilham, E. W. McKay, J. E. Tuggle, T. Noel Butler, Robert G. Kay, G. L. Tillery, J. L. Roberts, Robert D. Burbank, James E. Cannon, and M. D. Warren for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS CLARK, MCHORD, AND DANIELS.

DANIELS, *Commissioner*:

By schedules filed to become effective November 22, 1920, and later, respondents propose to cancel the joint rates, designated in their tariffs as "water competitive," on lumber and certain lumber products from points in southern Virginia, North Carolina, South Carolina, Georgia, Florida, and eastern Alabama to points in Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. The cancellation of these rates would leave in effect higher commodity rates. Upon protests the effective dates of the tariffs were suspended to April 21 and April 27, 1921. The present water-competitive rates apply on lumber, timber, wooden crossties, wooden box shooks, laths, and shingles. The increases in rates should the proposed tariffs become effective range from 0.5 cent to 8.5 cents and average about 5 cents. Rates are stated in cents per 100 pounds.

In 1898 certain of the respondents established from points in Florida to a limited number of eastern points on the Atlantic coast commodity rates on lumber, timber, and shingles which were lower than the then existing commodity rates. The rates were described in the tariffs as "water competitive rates," and remained in effect until May, 1900, when they were canceled. Later in 1900 "water competitive" rates were established on lumber and certain lumber products from Wilmington, N. C., to New York, N. Y., including the lighter-

age limits, and in 1901 such rates were established generally from the territory of origin in question to New York and to Jersey City, Newark, Trenton, Atlantic City, and Cape May, N. J.; Philadelphia and Chester, Pa.; Wilmington, Del.; and several other points in the same vicinity. These rates originally applied via Norfolk, Va., because, it is urged, that particular route was affected by water competition, but later were made applicable via Potomac Yard, Va., in connection with the Baltimore & Ohio Railroad. The water-competitive rates now apply to approximately 380 destinations along the Atlantic coast from Wilmington to Maine.

It is contended for respondents that while the rates made effective from Florida in 1898 were termed "water competitive," they were in fact established to accommodate traffic which was stranded by the sudden withdrawal of vessels due to the Spanish-American war and not to meet water competition. They were published as "water competitive," it is said, in order not to disrupt for so temporary a period the normal lumber rate adjustment. Respondents urge that the rates made effective in 1900 and 1901 were established to meet water competition. Their witnesses testified that there was a large tonnage of lumber handled at that time by water from the South Atlantic ports and from the interior by rail to the port and thence by water to eastern destinations.

On behalf of the respondents north of the Virginia gateways it was testified that from the time the water-competitive rates were first established there has been constant pressure for the extension of the territory of origin or of destination, not only from shippers but from other carriers working through Potomac Yard, Hagerstown, Md., or the Ohio River crossings; that as early as 1905 these rates had resulted in such embarrassment to the Pennsylvania Railroad that in September of that year that carrier notified the southern carriers to cancel them; that the latter carriers were not then in favor of withdrawing the rates, and they were not canceled, but that it was definitely agreed that the territory of origin should be "on and south of the main line of the Norfolk & Western Railroad and all points in the states of North and South Carolina, Georgia, and Florida"; that many times subsequent to 1905 officials of the Pennsylvania Railroad have considered the question of withdrawing these rates; and that in 1917 a determined stand was taken to have them canceled. In that year respondents filed with us fifteenth section applications for permission to cancel the water-competitive rates. A hearing was had on those applications, but previous to the determination thereof general order No. 28 of the Director General prescribed general increases in rates, effective June 25, 1918, and all fifteenth section applications pending before us, including those here referred to, were withdrawn.

In *American International, etc., Corp. v. Director General*, 58 I. C. C., 367, we held that the refusal of defendants to accord Hog Island, Pa., the water-competitive basis of rates on shipments of lumber moving from the south was unduly prejudicial to Hog Island and unduly preferential of Philadelphia and other points in the Philadelphia rate district and entered an order requiring the defendants to remove the undue prejudice. We further found that the rates assailed were not unreasonable. Respondents state that the decision in that case hastened their determination to cancel the water-competitive basis of rates and that the proposed cancellation of those rates by the tariffs under consideration was in compliance with our order in that case.

Respondents state that the water-competitive rates were a reduction from the normal basis of rates which applied to eastern trunk line and New England territories; that by this reduction two bases of rates were created, one the water-competitive basis, which applies to certain points along the coast, and the other the so-called normal basis, which applies generally throughout the territory. They urge that the rates to the water-competitive points discriminate against near-by points which take the higher normal rates, and that there are numerous fourth section departures under the present adjustment because lower rates apply to the water-competitive points than to intermediate points which take the normal rates. Respondents admit that the volume of movement to the intermediate points is small compared with that to the water-competitive points, but they insist that the volume of traffic to points in the same general territory taking the normal rates exceeds that to the water-competitive points. They show that during the years 1913 to 1916 and the first five months of 1917, 41 to 46 per cent of the carloads of lumber from Norfolk, Va., and from points on the southern lines through Norfolk, to eastern points moved to points not subject to water-competitive rates, the remainder being to water-competitive points. It is said that if the movement through the other gateways, Potomac Yard and Hagerstown, be considered, the volume of traffic to the points not taking water-competitive rates is in excess of that to the water-competitive points.

Respondents take the position that the water-competitive rates were reduced below the normal basis of rates applying to the east to meet water competition and that they do not desire to continue to meet water competition but seek to restore the rates to what they term the normal basis. They insist that the increased rates resulting from the cancellation of the water-competitive rates could be considered reasonable in themselves if for no other reason than the fact that they were merely being restored to the normal basis. Rates

from the south to the water-competitive points are compared with the rates to adjacent points which do not take water-competitive rates. For example, the water-competitive rate from New Bern, N. C., to Boston, Mass., a distance of 919 miles, is 38.5 cents, while to Worcester, Mass., 883 miles, Fitchburg, Mass., 909 miles, and Lowell, Mass., 937 miles, which do not take water-competitive rates, the rate is 42.5 cents. A similar showing is made with respect to the rates to Jersey City, a water-competitive point, compared with Rahway, Linden, and Metuchen, N. J., which do not take water-competitive rates.

Respondents show that the proposed rates are on a lower level than the rates for somewhat similar distances within southern territory, or from the south to central territory and Mississippi and Ohio river crossings, and that they compare favorably with the rates to interior points in eastern trunk line territory, and with rates prescribed or found not unreasonable by us from and to points for similar distances in various parts of the country.

The ton-mile earnings under the proposed rates from nine representative points of origin on the Atlantic Coast Line Railroad to Boston, New York, Jersey City, and Philadelphia are separately compared by respondents with the higher ton-mile earnings on lumber between various southern points for somewhat similar distances. Similar comparisons were made to show that the proposed rates are on a lower level than the rates from the south to points in central territory. It is also shown that the water-competitive rates from the south to Boston are 4 cents lower than the rates to Worcester, Springfield, and Framingham, Mass., and Danbury and Winsted, Conn., for approximately the same distance, and that the proposed rates to Boston are the same as to those points. Similar comparisons show that the proposed rates to Jersey City are 2.5 to 3 cents lower and the proposed rates to New York 1 to 1.5 cents higher than to Williamsport, Pa., Montclair and Bloomfield, N. J., and Bloomsburg, Pa., for similar distances; also that the proposed rate to Philadelphia is the same or lower than to Lancaster and Millersburg, Pa., and Newark, Del., and Cumberland, Md. Comparisons are also made showing that the proposed rates to Boston, New York, Jersey City, and Philadelphia are lower than the rates on scrap iron, cottonseed meal, copra, and rosin from the south to the same destinations. It is not claimed that these commodities are analogous to lumber, but the comparison is made, it is said, to show that the proposed rates are not on an unreasonably high basis compared with the rates on other commodities.

The operating results of class-I lines in the southern group for the period of four months ended August 31, 1920, show a deficit of over \$11,000,000, and for the six months ended October 31, 1920,

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a deficit of approximately \$890,000. It is asserted that for the months of September and October, 1920, the net railway operating income for class-I roads in the southern group is equivalent to a return on investment of but 3.25 per cent; and that the net operating income of the Southern Railway for the same months was sufficient to pay a return on the property investment as of October 31, 1920, of 2.96 per cent. It is shown that the earnings of class-I roads in the southern group during the six months ended August 31, 1920, were \$54,000,000 less than the government guaranty. The northern lines do not predicate the proposed increases upon revenue needs, and the record indicates that the southern lines on the whole will derive relatively small increases in their divisions from the proposed rates.

Respondents cite several decisions as showing that we have heretofore approved the so-called normal basis of rates to this territory. In *American International, etc., Corp. v. Director General, supra*, we said: "Complainant introduced little evidence as to the unreasonableness of the rates assailed * * *." None of the other cases cited warrant the conclusion that we have approved the application of the so-called normal rates in lieu of the water-competitive rates.

On behalf of the Baltimore & Ohio Railroad it was testified that the water-competitive rates via Potomac Yard in connection with that line were established in competition with the route through Norfolk and that it is proposed to cancel these rates via Potomac Yard, because such action is proposed with respect to rates via the Norfolk route.

Protestants, while not denying that some water competition has existed and still exists from the south to points in the east, contend that the water-competitive rates are not depressed, but that, on the contrary, they are reasonable. They urge that the water-competitive rates now apply and for many years have applied from all points in North Carolina, South Carolina, Georgia, and Florida, and from many points in Alabama, except that they do not apply from stations on the Louisville & Nashville Railroad; that they have been freely extended upon requests of shippers; and that the rates apply from many points in the interior of the territory of origin at which or from which there is no semblance of water competition. Respondents admit that the extreme western part of the territory of origin is not affected by water competition, but it is asserted that to a larger part of the territory lumber could move to the south Atlantic ports and thence by water to the east.

It is asserted that respondents' comparisons are largely from and to points between which lumber does not move to any extent. In support of their contention that the present rates are reasonable pro-

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testants compare them with the rates from the southwestern lumber blanket to St. Louis, Mo., and Chicago, Ill.; with the rates from the Louisville & Nashville stations, adjacent to and west of the territory from which water-competitive rates apply, to the east; with the rates from the Mississippi Valley and from Memphis, Tenn., and Cairo, Ill., to points in central territory and the east; with the rates from Minnesota to central territory; and with the rates from and to other points.

The following table is a summary from an elaborate exhibit submitted by protestants comparing the water-competitive and the proposed rates with the rates on lumber between numerous points in various parts of the country:

	Average distances.	Average rates.	Average earnings per ton-mile.	Average earnings per car-mile.
	Miles.	Cents.	Mills.	Cents.
Present water-competitive rates.....	868	42.1	10	30.3
Rates proposed.....	868	47.1	11.3	34.1
Virginia, Carolinas, and southeast to interior east.....	1,008	45	9.35	28.2
Mississippi and Louisiana to eastern points.....	1,608	55	6.7	20.3
Mississippi and Louisiana to central territory.....	797	39.8	10.3	30.9
Alabama and Florida on L. & N. R. to central territory.....	981	43.5	9.9	29.9
Cairo to central territory.....	484	28	10.6	31.8
Memphis to eastern points.....	1,090	45.6	8.3	25.9
Wisconsin and Minnesota to central territory.....	837	40.3	9.9	29.9
Powells, La., to central territory and east.....	1,228	48.9	8.4	25.2

Protestants call attention to the fact that the ton-mile and car-mile earnings under the proposed rates shown in the foregoing table are higher than in any of the other instances shown.

Comparison is made of the proposed rates from Georgia and Florida points to eastern destinations with the rates from other points in Georgia, Florida, and Alabama to points on the Ohio River and in central territory, as follows:

From—	To—	Distances.	Rates.
		Miles.	Cents.
Savannah, Ga.....	Philadelphia, Pa.....	780	1.38
Live Oak, Fla.....	Louisville, Ky.....	780	35
Jacksonville, Fla.....	Cairo, Ill.....	770	35
Waycross, Ga.....	Cincinnati, Ohio.....	760	35
Macon, Ga.....	Cornell, N. J.....	800	1.40.5
Tampa, Fla.....	Nashville, Tenn.....	800	38
Montgomery, Ala.....	Chicago, Ill.....	800	39.5
Palatka, Fla.....	Paducah, Ky.....	800	37.5
Waycross, Ga.....	New Brunswick, N. J.....	900	1.41.5
Jasper, Fla.....	Vincennes, Ind.....	900	40.5
Ocala, Fla.....	Covington, Ky.....	900	40
Live Oak, Fla.....	New York, N. Y.....	1,040	1.45.5
Pensacola, Fla.....	Milwaukee, Wis.....	1,040	46
Tifton, Ga.....	Davenport, Iowa.....	1,020	43.5
Kingland, Ga.....	Michigan City, Ind.....	1,040	43.5

1 Water-competitive rate.

The water-competitive rates from points in Georgia and Florida to New York are higher than the rates from the same points for similar distances to Chicago. From Macon, Ga., to New York, 890 miles, the rate is 45.5 cents, and to Chicago, 870 miles, 43.5 cents. From Willacoochee, Ga., to New York, 990 miles, the rate is 45.5 cents, and to Chicago, 1,010 miles, the rate is 43.5. From Fargo, Ga., and Live Oak, Fla., to New York and Chicago the distance in each instance is approximately 1,050 miles. The water-competitive rate from each of these points to New York is 46.5 cents, while the rate to Chicago is only 44.5 cents. It also appears that the water-competitive rates are higher for similar distances than the rates from the southwestern blanket, west of the Mississippi River, to Chicago and St. Louis.

It is urged that if the proposed rates are approved it will disrupt the present adjustment between the rates from the southeast and from Mississippi Valley to eastern destinations, and create fourth section departures both at points of origin and destination. It is pointed out that the present rate from Macon to Brooklyn, N. Y., a distance of 890 miles, is 45.5 cents, and that from Sylacauga, Ala., a point on the Louisville & Nashville, west of Macon, to Brooklyn, a distance of 1,041 miles via the short line, the rate is 49.5 cents. The proposed rate from Macon is 52 cents, and no change is contemplated in the rate from Sylacauga. The distance from Sylacauga to Brooklyn via Cincinnati, Ohio, the route over which it is said the traffic would naturally move, is 1,330 miles, and the Sylacauga rate applies also from Florida points involving hauls 200 miles greater. The distance from Dothan, Ala., to New York, 1,140 miles, is approximately the same as from Montgomery, Ala., on the Louisville & Nashville. The proposed rate from Dothan to New York is 54.5 cents, and no change will be made in the rate of 49.5 cents from Montgomery. The proposed rate from Dothan to New York is 5 cents higher than that from Montgomery, Evergreen, and Flomaton, Ala., all Louisville & Nashville stations west of Dothan, and from which no increases are proposed. Asheville, N. C., is intermediate from Morristown, Tenn., to New York, and the rates are 43.5 and 46 cents, respectively. The proposed rate from Asheville is 48.5 cents; no change is proposed in the Morristown rate. Thus the intermediate point, which now enjoys an advantage of 2.5 cents, would be at a disadvantage of 2.5 cents. A similar situation exists with respect to the rate from Hickory, N. C., which is intermediate to Chattanooga, Tenn. It is asserted for respondents that via the short line there would be no departure from the long-and-short-haul provision of the fourth section with respect to either Asheville or Hickory, but the short line would short haul the originating carrier, the Southern Railway. Other violations

of the fourth section are referred to with respect to destination territory, as shown in the following table:

From Jacksonville, Fla., to—	Dis- tances.	Present rate.	Proposed rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
New York, N. Y.	1,035	42.5	48
Harlem River, N. Y.	1,030	48	48
New Haven, Conn.	1,097	46.5	50.5
Boston, Mass.	1,254	46.5	50.5
130th St., New York.	1,025	46.5	46.5
Poughkeepsie, N. Y.	1,098	46.5	46.5
Albany, N. Y.	1,167	46.5	46.5
Frankfort, N. Y.	1,252	46.5	46.5

Rates to One hundred and thirtieth street, New York, and other points on the New York Central beyond New York are not published as water-competitive rates and no increase is proposed as to them. The rates to these points are less than the proposed rates to New York. New Haven and Poughkeepsie, practically the same distance from Jacksonville, now take the same rates. The proposed rate to New Haven, however, is 50.5 cents, while the Poughkeepsie rate will remain 46.5 cents. Boston and Frankfort are also about equally distant from Jacksonville and now take the same rates from that point. The proposed rate to Boston would result in a rate to that point 4 cents higher than to Frankfort.

The rate to New York includes Pennsylvania Railroad delivery at Thirty-seventh street, which is a considerable distance south of One hundred and thirtieth street on the New York Central. Lumber to One hundred and thirtieth street is floated directly past the Thirty-seventh street pier, yet the proposed rate to the latter point will be 1.5 cents higher than to One hundred and thirtieth street. In explanation of these apparent discrepancies in rates it is stated for the Pennsylvania Railroad that New York harbor is treated as a unit, and that the rates to New York harbor are made 4 cents higher than to Jersey City, because most of the lumber has to be lightered, and that the cost for this service is at least \$1.50 per ton. Respondents urge that if the rates to points on the New York Central are compared with the rates to Jersey City, which are 4 cents lower than the rates to New York, there will be no departures from the fourth section, and, furthermore, that the route more probably employed with respect to shipments to points on the New York Central is via the West Shore Railroad.

Comparisons offered by protestants are criticized on behalf of respondents on the ground that in computing distances, particularly from the Mississippi Valley to eastern trunk line territory, the distances used were those via the Ohio River rather than the short-line

mileage via Bristol, Va.-Tenn., and on the further ground that protestants' comparisons are largely between points where the rates are depressed, particular reference being made to the comparisons to St. Louis and Chicago. With respect to the criticism as to the routes used, protestants' witnesses testified that the bulk of the traffic from the Mississippi Valley moves via the Ohio River and furthermore that from numerous points in the Mississippi Valley the rates do not apply via the short line through Bristol. With respect to the criticism as to the use by protestants of rates which are depressed by reason of competition, it may be said that the exhibits submitted by protestants indicate that wherever lumber moves in considerable volume the rates are ordinarily relatively low.

The water-competitive basis of rates has been in existence for more than 20 years. It has been freely extended over a large territory to a considerable portion of which there was never any water competition, and adjustment of rates with competing lumber-producing territories have been made with relation to the water-competitive basis. While undoubtedly water competition had some influence upon respondents' original rates, the present rates and earnings thereunder do not appear to be unreasonably low. The increases proposed are substantial. There is no real contention on the part of respondents that the present rates are unremunerative. We can not disregard the fact that a large percentage of the lumber mills in the south are closed down. While the depressed condition of the lumber industry would not of itself warrant a finding that respondents have not justified the proposed increased rates, respondents are required to show by clear and convincing proof that the proposed increased rates are just and reasonable. That has not been done and we find that respondents have not justified the increased rates.

An order will be entered requiring the cancellation of the schedules and discontinuing these proceedings.

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No. 10763.

HARLEM FEED & GROCERY COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND LEHIGH VALLEY
RAILROAD COMPANY.

Submitted October 27, 1920. Decided February 26, 1921.

Storage charges at Cazenovia, N. Y., on carload shipments of grain and grain products found not unreasonable or unduly prejudicial, but certain shipments found to have been overcharged. Refund of overcharges directed and complaint dismissed.

D. J. Sims for complainant.

R. W. Barrett for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions differing in some respects from those recommended by him.

Complainant is a corporation engaged in the retail grain, feed, and general merchandise business at Cazenovia, N. Y. By complaint seasonably filed it alleges that the storage charges assessed at Cazenovia on 26 carloads of grain and grain products during the period from June, 1917, to March, 1919, were illegal, unreasonable, and unduly prejudicial. Reparation is sought.

Three of the shipments moved intrastate to Cazenovia and were delivered prior to January 1, 1918. We have no jurisdiction in respect of these shipments, and they will not be further considered. The other 23 shipments were consigned to complainant at Cazenovia from numerous points of origin and moved over the Lehigh Valley, hereinafter called defendant. They arrived at Cazenovia at various dates between June 7, 1917, and November 13, 1918. Notice of their arrival was duly given. Before delivery was effected the cars were unloaded into defendant's freight house on various dates between July 10, 1917, and November 18, 1918, and remained there for periods ranging from 1 to 77 days. Storage charges were assessed under rule 5 (f) of defendant's demurrage and storage tariff. While complainant alleges that these charges were unreasonable and unduly

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prejudicial its case is based on the contention that the storage charges were illegal and that charges should have been assessed under rule 1 (b) of this tariff. Reparation is claimed solely upon this ground. The tariff provisions follow:

Rule 5 (f). Carload freight which is unloaded by this company for the purpose of releasing needed equipment will be subject to storage charges the same as would have accrued under car demurrage rules had the freight remained in the car * * *.

Rule 1 (b). Other carload freight held in cars for delivery and subsequently unloaded in or on railroad premises at request of shipper or consignee is subject to demurrage rules while in cars and to these storage rules after it is unloaded. If unloaded by the railroad company the actual cost of unloading will be in addition to the storage charge, and if reloaded by the railroad company the actual cost of reloading will also be in addition to the storage charge. (See Rule 5(f).)

The context shows that by "other carload freight" is meant carload freight other than explosives or other dangerous articles.

The general storage charge was that provided by rule 5 (a), viz, one-half cent per 100 pounds per day, and manifestly applied to a storage service requested or authorized by the shipper or consignee. The charge provided by rule 5 (f), equal to the contemporaneous demurrage charge, was for application under the special circumstances indicated. Both rules apply to freight unloaded by the carrier.

Defendants admit that three of the shipments were unloaded at complainant's request and were subject to the provisions of rule 1 (b). Of the other 20 shipments, 6 were unloaded and placed in the freight house by complainant and 14 by defendant. The issue presented is whether these 20 shipments were unloaded "at the request of the consignee" and hence fall within the terms of rule 1 (b), or whether they are to be regarded as coming within the terms of rule 5 (f). It is complainant's position that all of the cars unloaded by defendant were so handled at complainant's request but its evidence is indefinite, no dates or reference to specific cars being given. Defendants insist that these cars were not unloaded at complainant's request, but to "release needed equipment" and were therefore subject to the provisions of rule 5 (f). They also insist that the cars unloaded by complainant were subject to the provisions of rule 5 (f), as they were unloaded to release needed equipment and the unloading was initiated by defendant, and that such unloading constitutes unloading "by this company" (Lehigh Valley).

It is apparent that the words "unloaded by the railroad company" in rule 1 (b) mean the physical service of unloading. The words in rule 5 (f) are almost the same, viz, "unloaded by this company," and we can not give them a different meaning. In order to be "unloaded by this company" the cars must be unloaded by the

Lehigh Valley or by some one acting for it. Complainant received no compensation from defendants for its services in unloading the six cars. Defendants admit that the charges collected on some of the shipments exceeded those which would have accrued under the terms of rule 5 (f).

Upon this record we find that the storage charges applicable were not unreasonable or unduly prejudicial, but that the charges applicable on the six shipments unloaded by complainant and the three shipments admittedly unloaded at complainant's request were those that would have accrued under rule 1 (b) of defendant's tariff. These shipments were accordingly overcharged. Defendants should promptly refund the overcharges, with interest.

The complaint will be dismissed.

GO I. C. C.

No. 11185.
UNION PETROLEUM COMPANY
v.
DIRECTOR GENERAL, AS AGENT, FORT WORTH &
DENVER CITY RAILWAY COMPANY, ET AL.

Submitted November 23, 1920. Decided February 26, 1921.

Rate on gasoline, in tank-car loads, from Iowa Park, Tex., to Westwego, La., for export, found not unreasonable. Shipments found to have been mis-routed and reparation awarded.

W. H. Reed for complainant.

Alexander M. Bull for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing petroleum products, alleges that the rate of 52.5 cents charged by defendants on nine car-loads of gasoline shipped from Iowa Park, Tex., to Westwego, La., for export, between October 10 and 23, 1918, was unreasonable to the extent that it exceeded 24.5 cents. The prayer is for reparation. Rates are stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

Iowa Park is a local station on the Fort Worth & Denver City. The shipper routed the shipments "Fort Worth" and inserted a rate of 44.5 cents in the bills of lading. The shipments, weighing 558,862 pounds, moved in tank cars over the Fort Worth & Denver City to Fort Worth and the Texas & Pacific beyond. Charges of \$2,934.02 were collected at the applicable combination commodity rate of 52.5 cents, composed of rates of 28 cents to Fort Worth and 20 cents beyond, plus 4.5 cents, the uniform increase on petroleum and its products under general order No. 28 of the Director General of Railroads. Contemporaneously a combination rate of 44.5 cents, composed of commodity rates of 28 cents to Beaumont, Tex., and 12 cents beyond, plus the increase of 4.5 cents, applied from Iowa Park to Westwego, via Fort Worth, in connection with the initial carrier. As the ship-

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ments could have moved via Beaumont under the shipper's routing instructions, they were misrouted when forwarded over the route taking the higher rate. This is admitted by defendants. All of the defendant carriers were under federal control.

Prior to June 25, 1918, a joint commodity rate of 20 cents was applicable from Iowa Park to Westwego on gasoline for export. On domestic shipments the rate applicable was the lowest combination of commodity rates in effect over the route of movement. On June 25, 1918, pursuant to general order No. 28 the domestic rates were increased 25 per cent and the export rate was canceled. In August, 1918, the domestic rates were reduced to the bases in effect prior to June 25, 1918, plus a uniform increase of 4.5 cents. The lowest combination rate applicable when these shipments moved was 44.5 cents, based on Beaumont. Subsequently, on October 24, 1918, a joint commodity rate of 24.5 cents on gasoline for export was established.

No evidence was offered by complainant to show that the rate charged was unreasonable *per se*, or relatively unreasonable as compared with rates on similar traffic from other Texas points to the Gulf ports. It relies solely upon the facts that rates lower than domestic rates were customary, and that a lower export rate was subsequently established. These facts alone do not constitute a basis for finding that the rate assailed was unreasonable.

Upon this record we find that the rate assailed was not unreasonable, but that the shipments were misrouted; that complainant paid and bore the charges thereon; that it was damaged by the misrouting in the amount of the difference between the charges paid and those that would have accrued if the shipments had been forwarded over the lower-rated route; and that it is entitled to reparation in the sum of \$447.09, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11310.

BISSINGER & COMPANY, INCORPORATED,

v.

DIRECTOR GENERAL, AS AGENT, UNION PACIFIC RAIL-
ROAD COMPANY, ET AL.

Submitted October 22, 1920. Decided March 1, 1921.

Rate on green salted hides from Cheyenne, Wyo., to Salt Lake City, Utah,
found not unreasonable. Complaint dismissed.

George B. Guthrie for complainant.

W. A. Robbins, George H. Smith, H. A. Scandrett, J. F. Finerty,
and *J. M. Souby* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued before us. Upon consideration of the record we have reached conclusions other than those suggested by the examiner.

Complainant, a corporation dealing in hides and wool, alleges by complaint filed March 2, 1920, that the fifth-class rate of 79.5 cents charged on two carloads of green salted hides shipped in February and March, 1918, from Cheyenne, Wyo., to Salt Lake City, Utah, was unjust and unreasonable to the extent that it exceeded a rate of 63 cents contemporaneously in effect on packing-house products. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates are stated in cents per 100 pounds, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments, aggregating 149,662 pounds, moved over the Union Pacific and the Oregon Short Line. Freight charges of \$1,189.82 were collected at the applicable fifth-class rate of 79.5 cents.

Green hides and packing-house products were and are rated fifth class in the governing western classification. When the shipments moved a commodity rate of 63 cents was applicable on packing-house products from Colorado common points, which include Cheyenne and Denver, to Utah common points, which include Salt Lake City. On June 25, 1918, under general order No. 28 of the Director

General of Railroads, the 63-cent rate was increased to 79 cents, and the fifth-class rate to 99.5 cents. The distance over the route of movement is 520 miles and the short-line distance from Denver over the same lines, by which Cheyenne may be intermediate, is 626 miles. The commodity rate on packing-house products included fresh as well as cured meats, lard, tallow, stearine, tails or switches, and other articles. Fresh and cured meats are more valuable than the hides, are more susceptible to damage, and require greater care in transportation. Refrigerator cars are generally used for packing-house products, whereas no special equipment is required for hides, which load much heavier than packing-house products.

Complainant states that by reason of the high rate it has been shut out of the Cheyenne market, most of the hides going to Denver for sorting and reshipping; that these two shipments were the only ones received by complainant from that point, although there is a movement to Salt Lake City from all along the line of the Union Pacific west of Cheyenne at much lower rates.

Defendants' witness testified that no other carload shipments had moved between these points, and that although Cheyenne is an assembling point the general market for this class of hides is in the east. They offered comparisons to show that the rate assailed was not out of line with other fifth-class rates for similar distances in the same general territory, and contend that the volume of movement did not and would not warrant the establishment of a commodity rate on hides the same as that on packing-house products. Complainant relies upon our conclusions in *Hagenburg v. Belt Ry. Co. of Chicago*, 53 I. C. C., 717, and the cases therein cited.

We find that the rate assailed was not unreasonable.

The complaint will be dismissed.

60 I. C. C.

No. 11114.

ACME CEMENT PLASTER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, FORT WORTH &
DENVER CITY RAILWAY COMPANY, ET AL.*Submitted July 14, 1920. Decided February 26, 1921.*

Rates on gas oil, in tank-car loads, from Iowa Park, Tex., to Acme, Okla., found unreasonable to the extent that they exceeded rates on fuel oil, in tank-car loads, by more than 2.5 cents. Adjustment of charges collected without tariff authority to that basis directed and complaint dismissed.

M. N. Sale and *S. H. West* for complainant.

A. B. Enoch for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing plaster, with principal office at St. Louis, Mo., alleges that the charges collected on two tank-car loads of oil, billed as solar oil, shipped April 11 and October 21, 1918, from Iowa Park, Tex., to its plant at Acme, Okla., were illegal in that they exceeded charges which would have accrued at the rates applicable on fuel oil; but that if the rates which defendants seek to apply on the shipments were applicable, they were unjust and unreasonable. We are asked to award reparation and to prescribe a reasonable rate for the future. Rates will be stated in cents per 100 pounds. By present rates are meant those in effect prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The dates and weights of the shipments, the rates applicable on fuel and gas oil, and the rates charged and amounts collected were as follows:

Dates.	Weights.	Amounts collected.	Rates charged.	Rates applicable.	
				Fuel oil.	Gas oil.
	Pounds.		Cents.	Cents.	Cents.
April 11, 1918.....	59,762	883.67	14	11.5	131.5
October 21, 1918.....	78,194	127.81	17	15	130.5

¹ Fifth-class rate.

No tariff authority existed for the rates charged and bills for undercharges to the basis of the fifth-class rates were rendered by defendants. These bills have not been paid.

Complainant used oil of the kind shipped as fuel in a Diesel engine. The evidence submitted as to whether this oil was a fuel oil or gas oil leaves much to be desired, but on the whole we are of the opinion that it was gas oil.

At the hearing defendants conceded that the oil shipped was gas oil and that the reasonable rate thereon was, is, and will be for the future 2.5 cents higher than the contemporaneous fuel-oil rate.

The present rates from Iowa Park to Acme on fuel oil and gas oil, in tank-car loads, are 16 and 18.5 cents, respectively.

We find that the commodity shipped was gas oil and that the fifth-class rates applicable were unreasonable as applied to this commodity to the extent that they exceeded by more than 2.5 cents per 100 pounds the contemporaneous rates on fuel oil in tank-car loads. The outstanding undercharges on the first shipment should be waived. On the second shipment undercharges should be collected to the basis herein found reasonable.

As the rate now in effect is satisfactory to complainant no order for the future is necessary, and an order will be entered dismissing the complaint.

60 I. C. C.

No. 11381.

EMPIRE COTTON OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHESTERFIELD &
LANCASTER RAILROAD COMPANY, ET AL.

Submitted November 29, 1920. Decided February 26, 1921.

Rate on cotton seed, in carloads, from Pageland, S. C., to Atlanta, Ga., found unreasonable. Reparation awarded and maximum reasonable rate prescribed for the future.

Charles E. Cotterill for complainant.

Frank W. Gwathmey for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint filed March 27, 1920, complainant, a corporation, alleges that the rate charged on two carloads of cotton seed shipped October 31, 1918, from Pageland, S. C., to Atlanta, Ga., was and is unjust and unreasonable. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in amounts per net ton, unless otherwise specified, and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The shipments moved over the Chesterfield & Lancaster to Cheraw, S. C., and the Seaboard Air Line, hereinafter called the Seaboard, to destination, 369 miles. They weighed 106,500 pounds and freight charges of \$362.10 were collected at the applicable class-D joint rate of 34 cents per 100 pounds, equivalent to \$6.80 per net ton. Complainant contends that a reasonable rate would not have exceeded the combination rate of \$4.50 contemporaneously in effect to Mina, Ga., and asks for a rate of \$3.60. The latter is the commodity distance rate applicable on cotton seed, in carloads, minimum weight 30,000 pounds, between points on the Seaboard for 369 miles.

Complainant's plant is located at Mina, 7 miles east of Atlanta on the Seaboard's line from Cheraw. Carload freight moving over the Seaboard from the east is hauled into the terminal at Howells, Ga.,

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4 miles east of Atlanta, and switched back 3 miles to Mina. It is within the switching limits of Atlanta with respect to shipments on which the Seaboard gets a line haul.

The \$4.50 rate to Mina was made up of the class-L rate of \$1 from Pageland to Cheraw, plus a distance commodity rate of \$3.50 for 336 miles, the distance from Cheraw to Mina. The application of this distance rate was limited to stations east of Atlanta. Subsequently a joint commodity rate of \$4.50 was established from Pageland to Mina, but not to Atlanta. The \$6.80, \$4.50, and \$3.60 rates yield respectively 18.43, 12.19, and 9.75 mills per ton-mile, and, at the average loading of the two shipments, 49, 32.5, and 26 cents per car-mile.

We find that the rate assailed was unreasonable to the extent that it exceeded \$4.50 per ton of 2,000 pounds, and that for the future it will be unreasonable to the extent that it exceeds \$4.50, plus the increase authorized in *Increased Rates, 1920, supra*. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$122.47, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 11217.

ARMOUR & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AMERICAN RAILWAY
EXPRESS COMPANY, ET AL.

Submitted August 14, 1920. Decided March 1, 1921.

Express rates on oleomargarine, in less than carloads, from Kansas City, Kans., to Los Angeles, Calif., found unreasonable. Reparation awarded.

J. C. Spence for complainant.

A. M. Hartung and *T. B. Harrison* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation engaged, among other things, in the manufacture of oleomargarine at Kansas City, Kans. By complaint filed February 4, 1920, as amended, it seeks reparation on 31 less-than-carload shipments of oleomargarine forwarded by express between November 10, 1917, and March 18, 1919, from Kansas City, Kans., to Los Angeles, Calif., alleging that the rates charged by defendants were unreasonable to the extent that they exceeded the rates contemporaneously in effect on butter from and to the same points. Rates will be stated in amounts per 100 pounds.

The shipments moved as described, and charges were ultimately collected at the applicable second-class rates, governed by the official express classification, of \$5.85 prior to July 15, 1918, \$6.43 between July 15 and December 31, 1918, inclusive, and \$6.52 on and after January 1, 1919. Commodity rates of \$3.98, \$4.38, and \$4.48, respectively, were contemporaneously in effect on butter from and to the same points.

On June 25, 1919, after the shipments moved, the commodity rate of \$4.48 on butter was made applicable on oleomargarine. Request for the establishment of this rate was made by complainant during March, 1919, following receipt by it of advice that charges on its shipments of oleomargarine from Kansas City to Los Angeles that had moved during a period of more than a year prior to February,

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1919, had been assessed at the commodity rates on butter under the misapprehension that those rates applied also on oleomargarine.

Oleomargarine is a combination of animal fats, vegetable fats, milk, and cream. It is also known by the trade name of "butterine," and is a substitute for butter. It comes in direct competition with butter and, to some extent, with lard and lard substitutes. Oleomargarine and butter are of the same weight density; are packed in the same character of containers; are used for the same purposes; and move under substantially similar circumstances and conditions. The wholesale price of oleomargarine averages about one-half the wholesale price of butter.

Complainant asserts that it has been the uniform practice of express companies, and of the railroads generally, to apply the same rates on oleomargarine as on butter. In each of the three general freight classifications oleomargarine has for many years been rated the same as butter. No change in this respect has been made by the consolidated classification. In the official express classification these commodities are rated second class with other articles of food. Complainant shows that the same freight rates apply on butter as on oleomargarine, in carloads and less than carloads, from Kansas City to Denver; and there is other evidence of record that where commodity rates are published on butter they generally apply also on oleomargarine.

Defendants insist that the extension of the application of the commodity rate on butter to oleomargarine is not to be taken as an admission of the unreasonableness of the class rate charged on complainant's shipments; that the volume of movement of a commodity is determinative of whether or not such commodity is entitled to a commodity rate; and that before the commodity rate on oleomargarine was established they ascertained that there was a volume of this commodity to be moved from and to the points herein considered. The extent of movement of oleomargarine which, in the estimation of defendants, justified the establishment of the commodity rates, was not disclosed; but witness for defendants stated that the 12 shipments made by complainant during January and February, 1918, probably would justify the establishment of a commodity rate. From the statement of shipments submitted by complainant, it appears that the heaviest movement of oleomargarine occurred during January and February of 1918 and 1919, and that no shipments moved during the late spring and early summer months of 1918. The evidence with respect to the total volume of movement of oleomargarine prior to the establishment of the commodity rate thereon is vague and indefinite. Defendants also urge that the rates charged on complainant's shipments have not been remunerative, and call

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attention to deficits which they incurred for their operations in 1917, 1918, and 1919. The continued maintenance of the commodity rate on butter justifies the conclusion that defendants regard it as a compensatory rate; and if compensatory for butter, there is nothing in this record to demonstrate that it would not have been compensatory for oleomargarine.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates contemporaneously in effect on butter from and to the points here considered; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 11384.

TARVER, STEELE & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ST. LOUIS SOUTH-
WESTERN RAILWAY COMPANY, ET AL.

Submitted December 3, 1920. Decided March 1, 1921.

Charges applicable on cotton from Bradley, Buckner, and Waldo, Ark., to Galveston, Tex., compressed in transit at Texarkana, Ark.-Tex., Longview, or Marshall, Tex., found to have been unreasonable. Reparation awarded.

J. L. West for complainant.

W. B. Hamilton for St. Louis Southwestern Railway Company, St. Louis Southwestern Railway Company of Texas, and Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the cotton business at Dallas, Tex., alleges by its complaint filed March 20, 1920, as amended, that the charges collected by defendants for the transportation and compression in transit of 39 shipments of cotton, aggregating 569 bales, between November 10, 1918, and February 17, 1919, both inclusive, from Bradley, Buckner, and Waldo, Ark., to Galveston, Tex., were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section. Reparation only is sought. Rates will be stated in amounts per 100 pounds and apply on cotton in any quantity.

Waldo and Buckner are local stations on the main line of the St. Louis Southwestern, hereinafter called the Cotton Belt, 46 and 38 miles, respectively, east of Texarkana, Ark.-Tex., and Bradley is a local station on the Shreveport branch of the Cotton Belt 44.7 miles north of Shreveport, La.

The cotton was uncompressed when shipped. The shipments moved over the Cotton Belt to Texarkana, the Texas & Pacific to Longview, Tex., and the International & Great Northern to Gal-

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veston. The shippers inserted directions in the bills of lading that the cotton was to be compressed in transit, in some instances at Texarkana, and in the others at Marshall, Tex., because the compress at Texarkana was embargoed. The cotton was compressed at the points indicated by the shippers, except one shipment compressed at Longview Junction for carriers' convenience. Charges were collected at rates of \$1.10 from Bradley; 90 cents, 93.5 cents, and \$1.70 from Buckner; and 79 cents, 94 cents, and \$1.70 from Waldo. The bases for these various rates are not disclosed. The first-class rate of \$1.55 governed by the western classification plus 15 cents per 100 pounds for compression in transit was applicable on all the shipments, and hence some of them were undercharged.

Defendants contemporaneously maintained a rate of 75 cents from Little Rock, Pine Bluff, and several other more distant points in Arkansas on the Cotton Belt, to Galveston, with carrier's privilege of compression at either Texarkana or Shreveport. Buckner and Waldo are directly intermediate via Texarkana to these 75-cent rate points and, with Bradley, are intermediate via Shreveport. The tariff publishing this 75-cent rate provided, in conformity with rule 77 of Tariff Circular 18-A, that upon request a rate not in excess of the rate from more distant points on the Cotton Belt would be published from intermediate points on one day's notice. This is a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602. No such request was made until after the shipments moved. Effective December 31, 1919, the 75-cent rate to Galveston, which included compression in transit at Texarkana, Shreveport, and other specified points on the Cotton Belt at graduated charges, but not exceeding 15 cents per 100 pounds, was made applicable from practically all points in Arkansas on the Cotton Belt south of Pine Bluff, including Bradley, Buckner, and Waldo, and that rate as increased under *Increased Rates, 1920*, 58 I. C. C., 220, is still in effect and is satisfactory to complainant.

Complainant contends that the rates charged on its shipments were unreasonable and unjustly discriminatory to the extent that they exceeded 75 cents, and we are asked to award reparation to that basis. This defendants resist, particularly because in some instances the shippers designated a compression point beyond the rails of the initial carrier. But they admit that the 75-cent rate, under carrier's privilege of compression, would have been published if application therefor had been made prior to the movement.

The cotton tariffs ordinarily name a rate under which the carrier reserves the privilege of compressing in transit, which rate is higher than that named on cotton delivered to the carrier compressed. As a rule, cotton delivered to the carriers to be compressed in transit is

compressed at the nearest or most available compress en route, and at the carriers' option may be back-hauled to other compresses. On account of the greater density and consequent heavier loading of compressed cotton it is to the carrier's advantage to compress it at the nearest compress point. The Cotton Belt, the originating carrier here, objects to any conclusion in this case which would permit shippers to designate a compress point off its line, upon the ground that it would be deprived thereby of the heavier loading. It is pointed out that as to the shipments which moved while the Texarkana compress was embargoed, if the shippers had not designated Marshall as the compress point, the cotton would have been compressed at either Tyler, Greenville, Sulphur Springs, or Mount Pleasant, Tex., points on the Cotton Belt, and under such an arrangement the originating carrier would have benefited by the heavier loading from the compress point.

From examination of the tariffs it appears that if the shippers had designated this route of movement without specifying any compress point, the cotton would have been compressed at Texarkana or, if the Texarkana compress was embargoed, at the next compress point, which would have been Marshall.

Upon this record we find that the charges collected on the shipments as to which the shippers directed compression in transit at Texarkana were unreasonable to the extent that they exceeded charges which would have accrued at a rate of 75 cents per 100 pounds, including the charges for compression; and that the charges collected on the shipments as to which the shippers directed compression in transit at Marshall were unreasonable to the extent that they exceeded charges which would have accrued at a rate of 75 cents per 100 pounds, plus a compress charge of 15 cents per 100 pounds, which compress charge is not shown to have been unreasonable. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the bases herein found reasonable; and that it is entitled to reparation, with interest. Collection of the undercharges down to the bases herein found reasonable may be waived. The amount of reparation due can not be determined on this record, and complainant should comply with rule V of the Rules of Practice. No order for the future is necessary.

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No. 11356.

BUICK MOTOR COMPANY (DIVISION OF THE GENERAL
MOTORS CORPORATION)

v.

DIRECTOR GENERAL, AS AGENT, GRAND TRUNK
WESTERN RAILWAY COMPANY, ET AL.

Submitted December 13, 1920. Decided March 1, 1921.

Rates charged on automobile tire carriers, in carloads, from Detroit, Mich., to Flint, Mich., during federal control, found applicable and not unreasonable. Complaint dismissed.

Albert Nelson for complainant.*W. K. Williams* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing automobiles at Flint, Mich., alleges that the rates charged by defendants on automobile tire carriers, in carloads, shipped from Detroit, Mich., to Flint between March 1, 1918, and August 26, 1919, were unlawful and unreasonable to the extent that they exceeded the fifth-class rates contemporaneously in effect. Reparation and the establishment of a reasonable rate for the future are asked.

The tire-carrying device shipped by complainant consists of an iron rim, similar to a wheel rim, with a crosspiece of steel and having two brackets for attaching it to the car. The official classification provided a rating of first class for "tire carrying cases" other than leather, shipped in boxes or crates. It also provided for "automobile parts, n. o. i. b. n., iron or steel" other than engine, driving gear, or steering gear, ratings of first class, less than carload, shipped loose; second class, less than carload, in barrels, boxes, or crates; and fifth class, in carloads, minimum 30,000 pounds, shipped loose or in packages. Complainant does not attack the measure of the rates charged, but contends that tire carriers are automobile parts and should therefore take the fifth-class rates in carloads.

Prior to December 18, 1918, metal automobile tire carriers moving within this territory were generally rated first class. An exception

was made to cover tire carriers similar to those used by complainant, which the official classification committee ruled should be rated by analogy as hardware, not otherwise specified, or third class in less than carloads and fourth class in carloads. The fourth-class rates of 17 cents prior to June 25, 1918, and 21.5 cents thereafter, were accordingly assessed on complainant's shipments. Since December 18, 1918, the fourth-class basis has been applied on all iron or steel tire carriers, in carloads.

Defendants contend that a tire carrier is not an essential part of an automobile such as to entitle it to the rating provided for iron or steel automobile parts, but is an accessory. Reference to the official classification discloses that other similar attachments, such as bumper guards, shock absorbers, and trunk racks are not recognized as automobile parts, but are given separate ratings of fourth class or higher in carloads. To classify these tire carriers as automobile parts would automatically increase the rates charged on less-than-carload shipments, for which there is no justification shown on this record.

We find that the fourth-class rates were applicable on complainant's shipments and that they were not unreasonable.

An order will be entered dismissing the complaint.

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No. 10928.

ATLANTIC PAPER & PULP CORPORATION

v.

DIRECTOR GENERAL, AS AGENT, NEW ORLEANS GREAT
NORTHERN RAILROAD COMPANY, ET AL.

Submitted October 20, 1920. Decided March 1, 1921.

Rate on wood pulp, in carloads, from Port Wentworth, Ga., to Bogalusa, La.,
found to have been unreasonable. Reparation awarded.

T. M. True for complainant.

R. V. Fletcher, Charles J. Rixey, jr., and D. Lynch Younger for
defendants.

John F. Finerty and Alex. M. Bull for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

A proposed report was served upon the parties. Exceptions were
filed by defendants to the report proposed by the examiner, and the
case orally argued before us. Upon consideration of the record we
have reached conclusions other than those suggested by the examiner.

Complainant, a corporation manufacturing wood pulp at Port
Wentworth, Ga., alleges by complaint seasonably filed that the rate
of 54 cents charged by defendants on 88 carloads of wet wood pulp,
shipped during the period from February 1 to May 21, 1918, both
inclusive, from Port Wentworth to Bogalusa, La., was unreasonable.
We are asked to award reparation. Rates are stated in cents per
100 pounds and do not include the increases authorized in *Increased
Rates, 1920*, 58 I. C. C., 220.

Port Wentworth is a local station on the Savannah & Atlanta
within the switching limits of Savannah, Ga. Bogalusa is a local
station on the New Orleans Great Northern, 36 miles north of
Slidell, La., and 114 miles south of Jackson, Miss. The rates on
wood pulp from Savannah apply from Port Wentworth. The ship-
ments were delivered to the carrier unrouted, and were forwarded to
Atlanta, Ga., over the Savannah & Atlanta and the Georgia. Be-
yond Atlanta, 39 shipments moved over the Atlanta & West Point,
Western of Alabama, and Southern, to Meridian, Miss., Alabama &

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Vicksburg to Jackson, and the New Orleans Great Northern to Bogalusa, 801 miles. Ten shipments moved over the same route to Meridian, thence over the New Orleans & Northeastern to Slidell, and the New Orleans Great Northern to destination, 796 miles. The remaining 39 shipments moved beyond Atlanta over the Atlanta & West Point and Western of Alabama to Montgomery, Ala.; Louisville & Nashville to New Orleans, La.; New Orleans & Northeastern to Slidell; and New Orleans Great Northern beyond, 829 miles. Charges were collected at the applicable joint sixth-class rate of 54 cents.

On May 11, 1918, defendants, except the Alabama & Vicksburg and the Louisville & Nashville, published a joint commodity rate of 31.5 cents from Port Wentworth to Bogalusa to become effective June 25, 1918. On the date it was to become effective it was increased to 39.5 cents under general order No. 28 of the Director General of Railroads.

It was testified for complainant that at about the time the first of the shipments moved the carriers were requested to establish a lower rate from Port Wentworth to Bogalusa, and that the Seaboard Air Line, together with certain of the defendant carriers, was willing to publish a rate of 28.5 cents. The Seaboard Air Line and connections form the short line, 696 miles. The New Orleans Great Northern insisted upon a division of 11 cents out of any rate established, that being its division on outbound shipments of wood fiber board, wood pulp board, and wood pulp. The 31.5-cent rate was based on a rate of 20.5 cents to Slidell, which is intermediate to New Orleans and takes New Orleans rates on traffic from Savannah, plus 11 cents demanded by the delivering carrier.

When the shipments moved defendants maintained over the routes of movement a rate of 22.5 cents on lumber, in carloads, from Port Wentworth and Savannah to Bogalusa. Complainant contends that the rate on wet wood pulp should not have exceeded the rate on lumber, and refers to rates on wood pulp lower than, or approximately the same as, rates on lumber from Port Wentworth to points in South Carolina, North Carolina, Virginia, and in trunk line and central territories; from Canton, N. C., to New Orleans, La., and certain Ohio River crossings; and from Roanoke Rapids, N. C., to points in trunk line territory.

The average distance over the routes of movement is about 809 miles. For this distance the rate charge yielded 18.3 mills per ton-mile, and, based on the average loading of approximately 62,000 pounds, 41.4 cents per car-mile. Complainant compares the rate charged and the earnings thereunder with contemporaneous rates ranging from 17.5 to 31.6 cents on wood pulp from Port Wentworth

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to Ohio River crossings, Memphis, Tenn., Virginia cities, and points in central and trunk line territories for distances of 510 to 1,209 miles, yielding ton-mile earnings of from 4.44 to 7.06 mills.

For defendants it was stated that the usual basis of rates from points in southeastern territory to local points on the New Orleans Great Northern is the lowest combination based on New Orleans, Slidell, or Jackson; that the rate charged was based on the sixth-class rates of 35 cents to Slidell and 19 cents beyond, and was lower than the sixth-class rate approved by us in *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, 32 I. C. C., 61, for hauls of 696 miles over two or more lines. The usual basis is not maintained in instances where it is considered necessary to meet the competition of other points of production; and commodity rates less than the combinations of local rates to and from junction points are maintained on fiber board, forest products, naval stores, cotton, scrap iron, and other commodities that move in large volume. It is improbable that additional shipments of wood pulp will move to Bogalusa.

A rate of 31.5 cents would yield 7.8 mills per ton-mile for the average distance over the routes of movement, and, based upon the average loading of the shipments, 24 cents per car-mile.

We find that the rate charged was unreasonable to the extent that it exceeded 39.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon at the rate herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

No. 10228.¹

LION COAL COMPANY

v.

UTAH RAILWAY COMPANY, DIRECTOR GENERAL, AS
AGENT, ET AL.

Submitted October 9, 1919. Decided March 5, 1921.

1. Rates charged by the Director General during the period of federal control to various points, and by the common carrier defendants to interstate points since the termination of federal control, for the transportation of coal in carloads from the Castle Gate group of mines on the lines of the defendants included and include the placing of cars at the mine tipples and the switching of cars from the mines of all the separate lines herein described with the sole exception of the mine of the complainant from which a separate charge was provided for in the tariff in addition to the group rate.
2. Rates on such traffic from complainant's mine to various points during the period of federal control, and to interstate destinations on lines of the defendants since the termination of federal control, found to have been unreasonable and unduly prejudicial in the past and for the future to be unduly prejudicial to the extent that the interstate through rates exceeded or may exceed the rates contemporaneously applicable from the mines of the fuel company as described in the report and which rates shall not exceed the interstate rates contemporaneously applicable from the Castle Gate group, as now described in defendants' tariffs to the same destinations.
3. Reparation awarded, and reasonable and nonprejudicial relationship of rates prescribed for the future.

G. A. Iverson for complainant.*B. S. Crow* for Utah Railway Company.*William D. Riter* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND
EASTMAN.AITCHISON, *Commissioner*:

A report herein was proposed by our examiner, to which exceptions were filed by defendant Utah Railway Company.

The complaint herein was brought by the Wattis Coal Company against the Director General of Railroads, the Utah Railway Com-

¹ This report embraces also Fifteenth Section Application No. 5938, filed by the Utah Railway Company, seeking authority to establish certain switching charges on coal, in carloads, from coal tipples in Utah to junction points on its line.

pany, the Denver & Rio Grande Railroad Company and its receivers, and Los Angeles & Salt Lake Railroad Company. The complaint also joined United States Fuel Company, a corporation, as defendant.

After the hearing, but before the matter was submitted, the interests of complainant Wattis Coal Company were taken over by the Lion Coal Company, also a corporation; and the latter company has been substituted as complainant. Throughout this report, wherever the term complainant is used, it will be considered as referring to the original complainant, unless the intent to refer to the Lion Coal Company is clearly indicated.

When the complaint was filed, and until August 26, 1920, defendant Utah Railway Company maintained a switching charge applicable on coal in carloads from Wattis coal tippie to Wattis Junction, Utah, of \$9 a car, subject to a minimum charge of \$10 per hour of service required. Under the authorization in *Increased Rates, 1920*, 58 I. C. C., 220, those charges were increased to \$4 and \$12.50, respectively, as appears by the schedules of the Utah Railway Company on file with us.

The Wattis Coal Company, by its complaint, filed August 3, 1918, alleges that it owns and maintains approximately 10,000 feet of standard-gauge railroad track leading from its coal mine to Wattis Junction, on the main line of the Utah Railway Company, and that the charge exacted by said company for the transportation of coal from complainant's mine to Wattis Junction has subjected complainant to the payment of rates and charges which were and still are unjust, unreasonable, and discriminatory.

We are asked to award reparation in the amount of \$660.94, which is said to represent switching charges paid by complainant for the period April 15 to April 29 and May 16 to July 5, 1918; and to require defendants to cease and desist from certain violations of the act to regulate commerce, as will be further developed in the present report.

Wattis Junction is situated near Mohrland, Utah, the southern terminus of the Utah Railway, which extends thence in a general northerly and westerly direction a distance of 98 miles to Provo, Utah, where it connects with its codefendants, the Los Angeles & Salt Lake Railroad, and the Denver & Rio Grande Railroad, hereinafter referred to as the Rio Grande. All of the coal from the complainant's mine moves to and through Provo, most of it to destinations in states other than Utah. The spur over which the switching service is performed was constructed by the original complainant, and has passed to the substituted complainant, Lion Coal Company.

From Utah Railway Junction, 26 miles north of Mohrland, the Utah Railway operates under lease over the double-track of the Rio Grande a distance of 52 miles to Thistle, Utah. Between Thistle and Provo the Utah Railway and the Rio Grande each have a single track. By a reciprocal lease arrangement both carriers operate interchangeably over these two pieces of track, the track of the Utah Railway being used for eastbound freight, and the track of the Rio Grande for westbound freight. By reason of the two-lease arrangements described both carriers are thus accorded a double track between Utah Railway Junction and Provo. This connects at the former point with the single-track line of the Utah Railway to Mohrland, and at the latter with the double-track line of the Rio Grande to Denver. Prior to December 1, 1917, the Rio Grande operated the entire mileage of the Utah Railway under lease.

The lines of all of the common-carrier defendants herein were taken over under federal control; and on June 30, 1918, the Utah Railway was relinquished by the Director General, and has since been operated by its corporate owners. The other common-carrier defendants remained under federal control at the time of submission of this controversy.

Certain of the shipments on which reparation is claimed were made in April and the early part of May, 1918, just after the complainant's mine was opened for operation and before any rate was established or published. The charge for the switching of those shipments, which was not covered by tariff publication, was practically the same as that now in issue.

The charge in question was made effective May 14, 1918, while the Utah Railway was under federal control, on one day's notice to the Commission and the public, in accordance with rule 57 of the Commission's Tariff Circular 18-A in respect of the establishment in the first instance of rates on newly constructed lines of road, including branches and extensions of existing roads. The charge, we observe, was indefinite and not in accordance with rule 4 (i) of Tariff Circular 18-A.

Simultaneously, by fifteenth section application, the Utah Railway Company sought permission to establish similar switching charges, ranging from \$1 to \$3 a car, not, however, subject to any minimum charge per hour, for the switching of coal from the four mines of the United States Fuel Company, hereinafter referred to as the fuel company, at Panther, Hiawatha, East Hiawatha, and Mohrland, all in Utah and in the same vicinity and rate group as Wattis Junction, to points of connection with the line of the Utah Railway.

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Why no minimum charge per hour is sought to be made here, as was done in the case of complainant's mine, is unexplained of record. For the Utah Railway it is asserted that charges would also have been made effective on one day's notice, on the date mentioned, had it not been that they were not initially established rates from newly opened mines, and therefore a fifteenth section application for permission to increase existing rates had to be filed. The fuel company spurs range from 0.7 mile to 1.5 miles in length. They, like the spur from the complainant's mine at Wattis Junction, were constructed by and are now owned by the fuel company, which they serve. The fuel company makes no protest against the proposed imposition of the switching charge from its mines, and, in fact, assents thereto.

The fifteenth section application referred to, No. 5938, was heard in connection with the issues raised by the complaint herein. It was made by the Utah Railway Company and not by the Director General. When the Director General, by his general order No. 28, advanced the rates for the transportation of freight generally, the advances were made applicable as of June 25, 1918, upon the line of the Utah Railway. On June 27, 1918, in compliance with instructions from the Railroad Administration, the traffic manager of that company by letter asked that the fifteenth section application be withdrawn. On June 30, 1918, the Utah Railway passed from federal control. On July 10, 1918, the traffic manager of the Utah Railway indicated to us his desire that the fifteenth section application be reconsidered, as the status of the railway had been determined by the relinquishment from federal control, and was informally advised that fifteenth section approval was necessary, and that the application as filed would be disposed of on its merits.

It will be observed that at no time while the line of railway in question was under federal control did the Director General exercise his power under the federal control act to establish a switching charge in addition to the group rate from the mines of the fuel company. The action of the traffic officers of the Utah Railway in attempting to establish switching charges in addition to the group rate from the mines of the fuel company seems to have been based upon an unwarranted interpretation of general order No. 15 of the Director General of March 26, 1918, which had to do with the cost of operation and maintenance of industry tracks and not with the charges to be collected for transportation over such tracks. From January 1, 1920, until the present time the Utah Railway has been free, on lawful notice, to file a schedule naming switching charges in addition to the group rate to the mine tipples of the fuel company, but has made no move in that direction.

The complainant's mine and the mines of the fuel company are all situated in the Castle Gate group of Utah mines, in which are also included the more numerous mines of the Rio Grande, some of which are situated on branch lines or spurs. Complainant's mine is the only one in this group at which an extra charge is made for switching over mine spurs. No charge was made by the Rio Grande for switching over the spurs of the fuel company prior to December 1, 1917, when it operated the Utah Railway under lease. Nor was any such charge proposed by the Director General or by the Utah Railway from the date mentioned, until the date of the filing of the fifteenth section application here in issue, on May 13, 1918.

The mines served by the Rio Grande with two exceptions are located on spurs or branches which were originally, or have since become, incorporated into the system line of that carrier.

One exception is the line of the Kenilworth & Helper Railroad, a short coal-carrying road which is operated by the Rio Grande under lease, and which was formerly operated by the owning coal company. The other exception is the 2-mile extension, from Standardville to Rains, of the Spring Canyon branch of the Rio Grande, which is now operated by the owning coal company, but which the Rio Grande is under contract to purchase upon the same plan that it purchased the spur as far as Standardville, namely, the payment of 15 cents a ton on the coal of the owning coal company until the cost of the construction of the spur has been paid.

It is the contention of the Utah Railway that its policy in respect of switching should not necessarily be determined by that of the Rio Grande, and that its situation is substantially different from that of the Rio Grande, in that it receives a line haul only to Provo, whereas the Rio Grande receives a line haul beyond Provo to Ogden and Salt Lake City, over twice the distance to Provo, with a corresponding increase in the volume of the rate. It is further asserted that the Spring Canyon branch and the Kenilworth & Helper Railroad, to which reference has been made and which were formerly operated by the owning coal companies, were not taken over for operation by the Rio Grande until the construction of Utah Railway was in prospect as a competitor in this field. It is further pointed out that the distance from the mine of the fuel company at Mohrland is about 15 miles greater than from the farthest mine on the Rio Grande in the Castle Gate group, and reference is made to the fact that the Rio Grande does not perform a switching service at all of its mines, inasmuch as tramways, ranging usually from 0.5 mile to 1.5 miles in length, are operated from certain of the mines to the main line of that carrier at the expense of the shipper.

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The complainant's mine and the mines of the fuel company are the only mines served by the Utah Railway. The complainant alleges that it would be subjected to undue prejudice and disadvantage, and that the fuel company would be given an undue preference and advantage, even if the switching charge should also be permitted to become effective from the mines of the fuel company, because of a community of interest which exists between the railway company, the fuel company, and a parent company of both.

All of the stock and bonds of the Utah Railway are owned by the United States Smelting, Refining & Mining Company, hereinafter referred to as the smelting company, a corporation capitalized at \$75,000,000 for mining and smelting purposes in Utah. A majority of the stock of the fuel company is also owned by the smelting company. There is no interlocking of directors between the Utah Railway and the fuel company, and the vice president and general manager of the fuel company is one of the minority stockholders of that company.

Although the fuel company and the Utah Railway are said to be operated independently of each other, the record shows that the traffic manager of the Utah Railway, although not officially connected with the fuel company, has in some matters described himself as the traffic manager of the fuel company, and gives needed rate or traffic advice to it. The fuel company has no traffic department of its own, and the traffic manager of the Utah Railway checks and revises all the fuel company's freight expense bills, and does this by reason of his position as traffic manager of the smelting company. He began to do this work for the fuel company at the request of that company, and not at the request of the smelting company.

Complainant originally contemplated and started to construct a switchback type of railway from its mine to the line of the Utah Railway, but the then traffic manager of the fuel company advised complainant that such a type of spur would not be acceptable, for either operation or final purchase on the payment plan described, to either the Utah Railway or the Rio Grande, which was then operating the line under lease. That official stated that a proper type of spur would probably be purchased by the Rio Grande. Complainant produced testimony to the effect that there was an oral agreement between the complainant and either the Rio Grande or the Utah Railway for the purchase of the spur. At any rate, it was suggested by the former traffic manager of the fuel company that plans for the regulation type of spur should be prepared by the engineering department of the Rio Grande, and this suggestion was adopted by the complainant, with the result that the cost of construction, approximately \$260,000, including \$60,000 for yard trackage at the mines, was increased greatly, perhaps 100 per cent, over the cost of the com-

struction of the switchback type of spur. It is stated of record by the vice president of the smelting company, who is also the president of the Utah Railway, that the former traffic manager of the fuel company had no authority to speak for the Utah Railway; but it fairly appears from the testimony of that former official, who was called as a witness by the complainant, that what he said as an official of the fuel company was not without its weight with the Utah Railway. To use his own words, he "was the man behind the gun, in a certain way."

That the fuel company makes no protest against the proposed imposition of the switching charge from its mines is said, on behalf of that company, to be due to its recognition of the additional cost over the main-line operation of performing the spur service, and to the excellent service rendered by the Utah Railway and the improvement over that formerly given by the Rio Grande, when it operated the line under lease. All concerned now admit that service is now 100 per cent efficient, as compared with about 70 per cent of efficiency when the line was operated by the Rio Grande. It is therefore suggested that the complainant is better off, as the fuel company will also be, if the proposed tariff naming the charge from its mines becomes effective, with a 100 per cent service, than it would be with the 70 per cent service of the Rio Grande, with no extra charge for switching.

The community of interest described between the Utah Railway, the fuel company, and the smelting company doubtless was instrumental in determining the attitude of the Utah Railway in publishing this charge from the complainant's mine, and in proposing to publish it also from the mines of the fuel company, and explains in part at least the reasons which could lead the fuel company to acquiesce in this added charge. But it is unnecessary to discuss the effect, if any, of this relationship upon the issue here presented, which can be determined independently of that fact. Nor will it be necessary to consider, as a contributing basis for our conclusions, the practice of the Rio Grande in making no charge for switching from its mines, or from the mines of the fuel company when it operated the line of the Utah Railway under lease.

The complainant's mine and the mines of the fuel company are to be viewed as identically situated so far as the announced intention of the Utah Railway, as expressed of record, is concerned, which is to treat all of these mines alike in the matter of the charge for switching. Physically, and from an operative point of view, they are to be regarded as substantially similarly located. The fact is that the added charge has already been made effective from the complainant's mine, and has not been made effective from the mines of the fuel com-

pany. There was some uncertainty as to whether the Utah Railway was under federal control. The line was, in fact, under federal control when the switching charges were established to and from complainant's mines; and the Director General did not attempt to exercise his power to establish like charges to and from the mines of the fuel company. The case, in substance and as a practical matter, should be viewed just as it would be if the switching charge of the complainant had been suspended with that of the fuel company. The rates charged by the Director General during the period of federal control, and by the common-carrier defendants since the termination of federal control, for the transportation of coal in carloads from the Castle Gate group of mines to interstate points on the lines of the defendants included and include the placing of cars at the mine tipples and the switching of cars from the mines of all the separate lines herein described with the sole exception of the mine of the complainant, from which a separate charge was provided for in the tariff in addition to the group rate. The proposed switching charge from the mines of the fuel company has not been justified, because the resulting increase in the through rates from the mines to final destinations, which is what the shipper is interested in, has not been justified. *Advances on Coal within Chicago Switching District*, 27 I. C. C., 71. No testimony was offered by the railway company in justification of the increased through charges, and the mere acquiescence of the fuel company therein does not afford a sufficient justification.

We find that the through charges made by the defendants against the complainant during federal control to all destinations, and since the termination of federal control to interstate destinations, were unreasonable to the extent of the added switching charge; that complainant made certain shipments from April 15 to April 29, and from May 16 to July 5, 1918, and paid and bore the charges thereon and has been damaged and is entitled to reparation to the extent of the added switching charge, with interest. The parties should submit a statement of the amount of reparation due under this finding in accordance with rule V of the Rules of Practice, upon the receipt of which we will consider further the question of awarding reparation. We further find that the complainant and the substituted complainant, Lion Coal Company, have been in the past, and for the future the Lion Coal Company will be, subjected to undue prejudice and disadvantage, and the United States Fuel Company has been in the past, and for the future will be, given an undue preference and advantage, to the extent that the interstate through rates from the mine of the original or substituted complainant to final destinations have exceeded, or may exceed, the rates contemporaneously applicable from the mines of the fuel company as de-

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scribed in the report, and which rates shall not exceed the interstate rates contemporaneously applicable from the Castle Gate group as now described in defendants' tariffs to the same destinations. Our finding herein will dispose of the fifteenth section application. In arriving at this conclusion we have not ignored the contention of the Utah Railway Company that the status of the spurs of the fuel company is not that of a common carrier. It is sufficient to say in this respect that increases are proposed in the interstate through rates from the mines of the fuel company over the routes and facilities as now operated by the Utah Railway Company under its tariffs. An appropriate order will be entered.

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No. 10982.

ELECTRIC COAL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN
ILLINOIS RAILROAD COMPANY, ET AL.

Submitted July 7, 1920. Decided March 5, 1921.

1. Rates on bituminous coal applicable during the period of federal control from Bronson to Chicago, Milford, and Jamaica, all in Illinois, as components of through rates from Missionfield, Ill., made by combination on Bronson, considered and (a) the rates to Chicago and Milford found not to have been unreasonable and (b) the rate to Jamaica found to have been unreasonable. Reparation awarded.
2. Separate rate of the electric line from Missionfield to Bronson not passed upon as that carrier was not under federal control.
3. Joint rate from Missionfield to Milford, effective June 27, 1919, found unreasonable during the remainder of the period of federal control. Reparation awarded.

Clarence B. Cardy for complainants.*K. L. Richmond* for Director General of Railroads.*W. H. Wylie* for Illinois Traction System.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

The issues here presented were made the subject of a proposed report by the examiner. Exceptions thereto were filed by complainants and by defendants other than the Danville, Urbana & Champaign Railway Company.

The complainants, Electric Coal Company, a corporation engaged in mining bituminous coal in the vicinity of Missionfield, Ill., and the Casparis Stone Company, a corporation operating a stone quarry at Jamaica, Ill., allege that the rates charged on bituminous coal shipped from Missionfield to Chicago, Milford, and Jamaica, Ill., were unreasonable, unjustly discriminatory, and unduly prejudicial in violation of sections 1, 2, and 3 of the act to regulate commerce and in violation of section 10 of the federal control act. They ask reparation on shipments made during the period of federal control and

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seek the establishment of a reasonable proportional rate from Bronson to Jamaica applicable on shipments from Missionfield.

Jamaica is situated on the Chicago & Eastern Illinois Railroad, 8.5 miles south of Bronson, Ill., on that line. Milford is on the Chicago & Eastern Illinois, 40 miles north of Bronson and 88 miles south of Chicago. Bronson is the junction point of the Chicago & Eastern Illinois and the Danville, Urbana & Champaign Railway, an electric line, which originates the traffic at Missionfield, about 2.5 miles east of Bronson.

Prior to June 27, 1919, there were no joint rates from Missionfield to Jamaica, Milford, or Chicago. Rates will be stated in this report as applicable per net ton. The rates applied were made by combination on Bronson. The Chicago & Eastern Illinois absorbed 10 cents of the Danville, Urbana & Champaign's rate to Bronson, which had been successively increased from 10 cents until at the time of the hearing it was 53 cents. On June 26, 1919, the combination rates, minus the Chicago & Eastern Illinois' absorption of 10 cents, were \$1.30 to Jamaica, \$1.58 to Milford, and \$1.66 to Chicago. Effective June 27, 1919, the Danville, Urbana & Champaign and the Chicago & Eastern Illinois established a joint rate of \$1.24 to Chicago, and made it applicable also to Milford as an intermediate point. The division received by the Danville, Urbana & Champaign out of this rate was 16 cents. At the same time the Chicago & Eastern Illinois canceled its tariff provision for the absorption of 10 cents of the Danville, Urbana & Champaign's rate to Bronson, and thereby increased the rate to Jamaica, which was continued on the Bronson combination, to \$1.40.

The complainants are satisfied with the joint rate of \$1.24 to Chicago, but they ask for reparation on shipments made prior to its establishment. They contend that the rate to Milford should be 8 cents less than to Chicago, and that the rate to Jamaica should be 61 cents.

The complaint is based largely on the fact that in connection with *The Fifteen Per Cent Case*, 45 I. C. C., 303, and general order No. 28 of the Director General of Railroads, both components of the Bronson combination were increased, whereas the complainants contend that in both instances the increase should have been a single one and in the combination through charge as a unit. The following composite table of rates in cents was submitted by the parties as showing the situation in question from June 30, 1917, to the present date:

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Dates.	Mission- field to Bronson.	Bronson to Jamaica.	Mission- field to Jamaica.	Bronson to Milford.	Mission- field to Milford.	Bronson to Chicago.	Mission- field to Chicago.
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
June 30, 1917.....	10	42	42	70	70	78	78
July 1, 1917.....	25	42	57	70	85	78	93
Oct. 16, 1917.....	25	57	72	85	100	93	108
June 25, 1918.....	26	77	93	120	135	126	143
Aug. 6, 1918.....	40	77	107	120	150	126	158
Oct. 6, 1918.....	40	87	117	115	145	122	153
Dec. 30, 1918.....	53	87	130	115	158	123	166
June 27, 1919.....	53	57	140	115	124	123	124

¹ The C. & E. I. absorbed 10 cents of the charges except the last, effective June 27, 1919, and made no absorption out of that rate.

² Joint through rate Missionfield to Milford and Chicago.

All these rates are intrastate. The Danville, Urbana & Champaign was not under federal control, and our jurisdiction is limited to the participation of the Chicago & Eastern Illinois beyond Bronson during the period of federal control.

The rates from Bronson to Chicago and Milford subsequent to June 25, 1918, and prior to June 27, 1919, were the same as those of the Chicago & Eastern Illinois to the same points from mines in the Danville group, to which as local rates from Bronson complainants take no exception. As components of the through rates from Missionfield they do not appear unreasonable when it is considered that the Chicago & Eastern Illinois furnished all the equipment to the Danville, Urbana & Champaign and absorbed 10 cents of the latter carrier's rate from the mines to Bronson. Until the establishment of the \$1.24 joint through rate from Missionfield, the rate to Milford from Bronson had always, so far as disclosed by exhibits of record, been 8 cents less than that to Chicago. The joint rate of \$1.24 as applied from Missionfield to Milford was unreasonable from June 27, 1919, to February 29, 1920, both inclusive, to the extent it exceeded \$1.16, and we so find. We further find that the Electric Coal Company made shipments from Missionfield to Milford as described and paid and bore that portion of the charges thereon in excess of the charges that would have accrued on the basis herein found reasonable; that it was damaged thereby, and is entitled to reparation on shipments made from June 27, 1919, to February 29, 1920, both inclusive, against the Director General, as Agent, in the amount so paid by it, with interest.

The rate of 61 cents, which complainants deem reasonable from Missionfield to Jamaica, is the same as obtains from Bennett, 5 miles north of Jamaica and 3 miles south of Bronson. The request for that rate is based principally upon comparisons of rates for similar distances in Indiana and Illinois, including a distance-scale rate of 70 cents for 10 miles in Illinois, and for 20 miles and under for a two-line haul in Indiana, and including also a joint rate of

62 cents from Muncie, Ill., to Soldiers' Home, Ill., for 14.6 miles, and a rate of 60 cents from Clinton, Ind., to Terre Haute, Ind., for the same distance. The defendants state that this latter rate is for a single-line haul, and that the rate is 70 cents for a two-line haul from the same field to Terre Haute. The 42-cent rate in effect on June 30, 1917, from Bronson to Jamaica, under the increases made in connection with *The Fifteen Per Cent Case* and with general order No. 28, would amount to 77 cents.

We find that the rates from Bronson to Jamaica applicable on coal originating at Missionfield were not unreasonable prior to June 25, 1918, but that on and after that date during the remainder of the period of federal control they were unreasonable to the extent that they exceeded 70 cents. We further find that the Casparis Stone Company made shipments of coal from Missionfield to Jamaica, to which the rates herein found unreasonable were applied as components of the through rate; that it paid and bore the charges thereon and was damaged thereby; and that it is entitled to an award of reparation against the Director General, as Agent, in the amount of the difference between the published rates of the Chicago & Eastern Illinois applied to such shipments and those that would have accrued upon the basis herein found reasonable, with interest.

The exact amount of reparation due complainants can not be determined on this record. Upon receipt of statements in accordance with rule V of the Rules of Practice, we will consider the entry of an order as to reparation.

No order for the future as to these intrastate rates is appropriate.

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No. 6194.¹

HOLMES & HALLOWELL COMPANY

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

No. 7895.

TRAFFIC BUREAU OF THE COMMERCIAL CLUB OF
ABERDEEN, S. DAK.,

v.

GREAT NORTHERN RAILWAY COMPANY ET AL.

Submitted October 6, 1920. Decided March 8, 1921.

Rates on coal from the head of the lakes to various points in the states of Minnesota, North Dakota, and South Dakota found unreasonable and unduly prejudicial. A reasonable basis of rates prescribed. Reparation denied.

Stanley B. Houck, C. B. Hill, B. G. Dahlberg, W. N. Webb, and Jeffery & Campbell for complainants in the Holmes & Hallowell

¹ This report also embraces complaints in No. 6357, Imperial Elevator Company v. Great Northern Railway Company; No. 6357 (Sub-No. 1), Crosier-Olds Coal Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 2), T. E. Moen v. Great Northern Railway Company; No. 6357 (Sub-No. 3), Fairchild Fuel Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 4), J. D. Burkhardt v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 5), W. J. Bailey v. Great Northern Railway Company; No. 6357 (Sub-No. 6), F. C. Alsop & Company v. Northern Pacific Railway Company; No. 6357 (Sub-No. 7), Albert M. Houck v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6357 (Sub-No. 8), Magill & Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 9), R. E. Jones Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6357 (Sub-No. 10), Larsen & Anderson v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 11), Clara City Lumber Company v. Great Northern Railway Company; No. 6357 (Sub-No. 12), John E. Jones v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 13), McGregor Brothers & Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 14), Chesley Lumber & Coal Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 15), Magill & Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 16), Interior Lumber Company v. Great Northern Railway Company et al.; No. 6357 (Sub-No. 17), Pepper & Diemer v. Great Northern Railway Company; No. 6357 (Sub-No. 18), J. E. Jones v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; No. 6357 (Sub-No. 19), Lanesboro Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 6357 (Sub-No. 20), Pepper & Diemer v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company;

No. 6552, Lampert Lumber Company et al. v. Great Northern Railway Company et al.; No. 6552 (Sub-No. 1), Holes Brothers et al. v. Great Northern Railway Company; No. 6552 (Sub-No. 2), Cargill Elevator Company et al. v. Great Northern Railway Company; No. 6552 (Sub-No. 3), Liberty Lumber Company v. Great Northern Railway Company; No. 6552 (Sub-No. 4), Midland Lumber & Coal Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; No. 6552 (Sub-No. 5), Interior Lumber

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cases; *Donald D. Conn* and *S. J. Harvey* for Crookston Lumber Company, *St. Hilaire Retail Lumber Company*, and *Nichols-Chisholm Lumber Company*, complainants in No. 7281, Sub-No. 4; and *Oliver E. Sweet*, *D. L. Kelley*, and *E. M. Hendricks* for complainant

Company v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 6552 (Sub-No. 6), *Skewis Grain Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company*; No. 6552 (Sub-No. 7), *Lampert Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.*; No. 6552 (Sub-No. 8), *Public Service Company of St. Cloud, Minn. v. Great Northern Railway Company et al.*; No. 6552 (Sub-No. 9), *State Elevator Company v. Great Northern Railway Company et al.*; No. 6552 (Sub-No. 10), *C. W. Adams Lumber Company v. Chicago Great Western Railroad Company et al.*; No. 6552 (Sub-No. 11), *Stearns Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 6552 (Sub-No. 12), *New London Milling Company et al. v. Great Northern Railway Company*; No. 6552 (Sub-No. 13), *A. C. Ochs Brick & Tile Company et al. v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.*; No. 6552 (Sub-No. 14), *Stenerson Brothers Lumber Company v. Great Northern Railway Company*;

No. 6715, *Interior Lumber Company v. Northern Pacific Railway Company et al.*; No. 6715 (Sub-No. 1), *F. C. Alsop & Company v. Northern Pacific Railway Company*; No. 6715 (Sub-No. 2), *Imperial Elevator Company v. Great Northern Railway Company*; No. 6715 (Sub-No. 3), *T. B. C. Evans v. Northern Pacific Railway Company*; No. 6715 (Sub-No. 4), *Larsen & Anderson v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 5), *Midland Lumber & Coal Company v. Chicago, Milwaukee & St. Paul Railway Company*; No. 6715 (Sub-No. 6), *Lampert Lumber Company v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 7), *Fairchild Fuel Company v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 8), *Swain-Farmer Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.*; No. 6715 (Sub-No. 9), *Central Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company*; No. 6715 (Sub-No. 10), *Central Lumber Company v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 11), *Chealey Lumber & Coal Company v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 12), *Eden Valley Lumber Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company*; No. 6715 (Sub-No. 13), *B. L. Brackett v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 6715 (Sub-No. 14), *Argyle Mercantile Company et al. v. Great Northern Railway Company*; No. 6715 (Sub-No. 15), *John McCormick v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 6715 (Sub-No. 16), *Cal Jivright v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 6715 (Sub-No. 17), *H. W. Ross Lumber Company v. South Dakota Central Railway Company et al.*; No. 6715 (Sub-No. 18), *H. W. Ross Lumber Company v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 19), *H. W. Ross Lumber Company v. Great Northern Railway Company*; No. 6715 (Sub-No. 20), *H. W. Ross Lumber Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company*; No. 6715 (Sub-No. 21), *George A. McCauley v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 22), *George A. McCauley v. Great Northern Railway Company et al.*; No. 6715 (Sub-No. 23), *H. W. Ross Lumber Company v. Great Northern Railway Company et al.*;

No. 6794, *Northwestern Elevator Company et al. v. Great Northern Railway Company et al.*; No. 6794 (Sub-No. 1), *Winter-Truesdell-Ames Company v. Great Northern Railway Company et al.*; No. 6794 (Sub-No. 2), *Duluth Elevator Company et al. v. Great Northern Railway Company et al.*; No. 6794 (Sub-No. 3), *Monarch Elevator Company et al. v. Northern Pacific Railway Company*; No. 6794 (Sub-No. 4), *Dower Lumber Company v. Northern Pacific Railway Company*; No. 6794 (Sub-No. 5), *Dower Lumber Company v. Great Northern Railway Company*; No. 6794 (Sub-No. 6), *Wilcox Lumber Company v. Northern Pacific Railway Company*;

No. 6983, *Lampert Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company et al.*; No. 6983 (Sub-No. 1), *John D. Gruber Company v. Great Northern Railway Company et al.*; No. 6983 (Sub-No. 2), *Minnesota Stone Company v. Chicago, Milwaukee & St. Paul Railway Company et al.*;

No. 7281 (Sub-No. 2), *Norts Lumber Company v. Great Northern Railway Company et al.*; No. 7281 (Sub-No. 3), *Norts Lumber Company v. Great Northern Railway Company et al.*; No. 7281 (Sub-No. 4), *Crookston Lumber Company et al. v. Great Northern Railway Company et al.*; No. 7281 (Sub-No. 5), *Lidgerwood Mill Company et al. v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company*; No. 7281 (Sub-No. 6), *Farmers Grain & Milling Company v. Great Northern Railway Company*; No. 7281 (Sub-No. 7), *Cargill Elevator Company v. Great Northern Railway Company et al.*; No. 7281 (Sub-No. 8), *Farmers Elevator Company v. Great Northern Railway Company*;

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in No. 7895, and Board of Railroad Commissioners of South Dakota, interveners.

H. A. Wagner and L. F. Shuttleworth for Huron Commercial Club; J. P. Haynes for Traffic Bureau, Chamber of Commerce of

No. 7498, Christenson Imes Lumber Company v. Northern Pacific Railway Company et al.; No. 7498 (Sub-No. 1), Hawley Roller Mill Company v. Northern Pacific Railway Company; No. 7498 (Sub-No. 2), T. M. McCord Company v. Northern Pacific Railway Company; No. 7498 (Sub-No. 3), Christenson Imes Lumber Company v. Great Northern Railway Company;

No. 7656, John Miller Company v. Northern Pacific Railway Company; No. 7656 (Sub-No. 1), T. H. Froslee v. Northern Pacific Railway Company;

No. 8033, M. S. Alexander et al. v. Chicago & North Western Railway Company;

No. 8119, Federal Elevator Company et al. v. Great Northern Railway Company; No. 8119 (Sub-No. 1), J. Kiewel Brewing Company et al. v. Northern Pacific Railway Company; No. 8119 (Sub-No. 2), Red Wing Malting Company et al. v. Chicago, Milwaukee & St. Paul Railway Company; No. 8119 (Sub-No. 3), Cutler-Magner Company et al. v. Great Northern Railway Company; No. 8119 (Sub-No. 4), Cutler-Magner Company et al. v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 5), Wilcox Lumber Company et al. v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 6), Dwight M. Baldwin, jr., v. Northern Pacific Railway Company; No. 8119 (Sub-No. 7), Dwight M. Baldwin, jr., v. Great Northern Railway Company; No. 8119 (Sub-No. 8), Dwight M. Baldwin, jr., v. Northern Pacific Railway Company; No. 8119 (Sub-No. 9), Dwight M. Baldwin, jr., v. Great Northern Railway Company; No. 8119 (Sub-No. 10), Baldwin Elevator Company v. Great Northern Railway Company; No. 8119 (Sub-No. 11), D. E. Kerr v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 12), D. E. Kerr v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 13), H. A. Quinn Lumber Company v. Chicago & North Western Railway Company et al.; No. 8119 (Sub-No. 14), S. H. Bowman Lumber Company v. Chicago & North Western Railway Company et al.; No. 8119 (Sub-No. 15), Hoover Grain Company v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 16), Montrose Milling Company v. Great Northern Railway Company; No. 8119 (Sub-No. 17), Bird Island Roller Mills Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 8119 (Sub-No. 18), Lowry Lumber Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 19), Maple Lake Milling Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 20), E. L. Brackett v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 8119 (Sub-No. 21), W. G. Manning v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 8119 (Sub-No. 22), Mille Lacs Spur Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 23), Walter L. Johnson v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 8119 (Sub-No. 24), McClure Coal Company v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 25), S. H. Bowman Lumber Company v. Chicago, Milwaukee & St. Paul Railway Company; No. 8119 (Sub-No. 26), H. W. Ross Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 8119 (Sub-No. 27), Winger Farmers Elevator Company v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 28), Larimore Lumber & Fuel Company v. Great Northern Railway Company; No. 8119 (Sub-No. 29), J. T. Keating v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 30), Starbeck Brothers v. Chicago, Milwaukee & St. Paul Railway Company; No. 8119 (Sub-No. 31), L. Mikkelsen v. Great Northern Railway Company; No. 8119 (Sub-No. 32), Argyle Mercantile Company et al. v. Great Northern Railway Company; No. 8119 (Sub-No. 33), Atwood Larson Company et al. v. Chicago, Milwaukee & St. Paul Railway Company; No. 8119 (Sub-No. 34), Christianson & Matson et al. v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company; No. 8119 (Sub-No. 35), Appleton Flour & Feed Company et al. v. Chicago, Milwaukee & St. Paul Railway Company et al.; No. 8119 (Sub-No. 36), Anchor Grain Company et al. v. Chicago, St. Paul, Minneapolis & Omaha Railway Company; No. 8119 (Sub-No. 37), Carlson Brothers et al. v. Great Northern Railway Company et al.; No. 8119 (Sub-No. 38), S. H. Bowman Lumber Company v. Chicago, St. Paul, Minneapolis & Omaha Railway Company et al.; No. 8119 (Sub-No. 39), Craine-Johnson Company et al. v. Northern Pacific Railway Company; No. 8119 (Sub-No. 40), John R. Jones et al. v. Minneapolis, St. Paul & Sault Ste. Marie Railway Company et al.; and No. 8119 (Sub-No. 41), Granite City Granite Company et al. v. Great Northern Railway Company et al.

Sioux City; *F. S. Keiser* for Commercial Club of Duluth, interveners in No. 7895.

R. W. Ropiequet for Illinois Coal Traffic Bureau and Coal Operators' Association, interveners; and *Frank Lyon* for Northwestern Coal Dock Operators Association, interveners.

John F. Finerty, A. H. Lossow, O. W. Dynes, J. N. Davis, R. H. Widdicombe, M. M. Joyce, Asa G. Briggs, W. F. Dickinson, Kenneth Burgess, A. P. Humburg, B. W. Scandrett, and E. C. Lindley for defendants.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These cases are submitted upon exceptions by complainants in Nos. 6194 and 7895, all defendants, and certain interveners to the report proposed by the examiner and served upon all parties, and upon which oral argument has been had.

On December 24, 1915, we rendered our report in No. 6194, *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 37 I. C. C., 627, and the related cases mentioned, with the exception of Nos. 7895, 8033, and 8119, which were not then before us. As originally filed, the complaints attacked the class rates as well as various commodity rates in effect between Duluth, Minn., Superior, Wis., and other ports on Lake Superior, commonly spoken of as the head of the lakes, on the one hand, and several hundred points in the states of Minnesota, North Dakota, South Dakota, and Iowa, on the other hand, as unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation was sought. The Railroad and Warehouse Commission of Minnesota was duly notified of the proceeding but has taken no part.

These proceedings were the outgrowth of rate legislation enacted by the state of Minnesota and fully discussed in the above-mentioned report. Briefly reviewing the adjustment, it will suffice to say that the Northern Pacific, the Great Northern, the Chicago & North Western and its affiliated line, the Chicago, St. Paul, Minneapolis & Omaha, and the Minneapolis, St. Paul & Sault Ste. Marie railroads operate through lines between the head of the lakes and the destination territory here involved, and that the Chicago, Milwaukee & St. Paul Railway through trackage rights over the Northern Pacific between Minneapolis and St. Paul and Duluth and Superior, also serves this territory direct. Rates had been promulgated by the state of Minnesota applicable on intrastate traffic, and these rates were, for example, established by the Northern Pacific both over its intrastate and interstate routes from Duluth to points in Minnesota. At common destinations these rates were observed generally by interstate lines operating from the same point of origin, but at points local to such lines rates higher than the intrastate basis

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were maintained. The Chicago, Milwaukee & St. Paul has both an interstate and an intrastate route, and it publishes two lines of rates applicable, respectively, on interstate and intrastate traffic. The intrastate rates of this carrier are not met by lines operating wholly interstate routes. The result is that certain points in the state of Minnesota, distance considered, secure relatively more favorable rates than other points located in that state and in the states of North Dakota, South Dakota, and Iowa. This condition gave rise to the complaints in question. In the report mentioned we dismissed the complaints on all issues except in so far as they related to the rates on anthracite and bituminous coal, coke, and briquets, from the head of the lakes to the destinations in the states named, as to which we said, at page 647:

The conclusion is irresistible that unjust discrimination has been shown in the coal rates under attack.

The existence of this discrimination and prejudice was not then, nor is it now, questioned by the defendants. On the contrary, they admit that it exists, but in the former proceeding the record was not sufficiently complete to enable us to say what would be an equitable basis for its removal, as we pointed out:

The removal of the discrimination * * * should not be required without a finding as to what would be just and reasonable rates for the interstate transportation of anthracite and bituminous coal from the head of the lakes to the territory here involved. For such a finding this record affords no adequate basis. * * *

Many other facts bearing upon the issues now before us have not been shown with respect to all of the defendants, such as the history of the interstate rate structures, volume of movement via each line, car loading and value, use of equipment, revenue, competitive and transportation conditions, relation of rates from various points of origin, terminal expenses, loss and damage, and other facts pertinent to an inquiry involving the reasonableness of rates. In consequence no order should be made at this time requiring the removal of the unjust discrimination here found to exist with respect to the rates on coal. These cases will, therefore, be set for further hearing, when opportunity will be afforded all of the parties for developing all of the necessary facts upon which reasonable and nondiscriminatory rates may be prescribed.

This further hearing was had in June, 1916. At this time Nos. 8033 and 8119 and Sub-Nos. 1 to 41, inclusive, which embrace the same general issues, were heard with the other related cases in the *Holmes & Hallowell Case*, hereinafter referred to as the *Minnesota Cases*. It was stipulated by the parties to these proceedings that, in so far as they involved rates on coal, no separate hearing need be had; that the testimony and evidence in the cases set for rehearing would be considered as the testimony and evidence in these proceedings; and that they should abide the event and be controlled by the decision in the other cases. Before the matter could be concluded

the advances allowed by us in *The Fifteen Per Cent Case*, 45 I. C. C., 303, became effective, and the Railroad and Warehouse Commission of Minnesota likewise permitted certain increases in line therewith in connection with the rates in that state. In consequence of these changes a still further hearing was had in May, 1918, for the purpose of bringing the rate comparisons down to date. At this hearing it was intimated that certain changes had also taken place in the transportation, traffic, and commercial conditions, but, owing to the limited scope of the hearing, testimony concerning these changes could not properly be received in evidence at that time. Because these alleged changed conditions were not before us, and for the further reason that the Director General of Railroads had not been made a party to the proceedings and, therefore, an order for the future would not then properly lie, it was proposed in a tentative supplemental report that the complaints should be dismissed. Thereupon the complainants asked that the cases be reopened, which request was granted by an order limiting the hearing "to the question of the extent of the discrimination now existing and the proper method of removing it." At this time the Director General was made an additional party respondent. This further hearing was held in December, 1919.

The issues in No. 7895, *Traffic Bureau of the Commercial Club of Aberdeen, S. Dak., v. G. N. Ry. Co.*, hereinafter referred to as the *South Dakota Case*, are but slightly different from those in the *Minnesota Cases*. The complaint in this proceeding attacks the rates on coal, coke, and briquets from the head of the lakes to all points in that section of South Dakota lying east of the Missouri River as unreasonable *per se* and by comparison, and unjustly discriminatory and unduly prejudicial as compared with the rates from the same points to destinations in Minnesota, Iowa, and North Dakota. Reparation is not asked in this case. As the traffic involved is precisely the same as that embraced in the *Minnesota Cases*, this docket has, in every instance beginning with the hearing of June, 1916, been set for hearing in connection with the *Minnesota Cases*, although never formally consolidated. One previous hearing was had in connection therewith in March, 1916. Otherwise the history of this case is precisely the same as that of the *Minnesota Cases*.

Neither the *South Dakota Case* nor the *Minnesota Cases* can be decided without directly affecting the conclusions in the other, and it therefore becomes desirable, if in fact not imperative, to consider them together. Practically all the testimony introduced by complainant in the *South Dakota Case* at the hearing in December, 1919, was by stipulation made a part of complainants' evidence in the *Minnesota Cases*, and defendants' testimony was offered as the

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defense in both proceedings. The issues presented in both cases, therefore, will be disposed of in one report.

There have intervened in these proceedings the following interests: The Board of Railroad Commissioners of South Dakota, the commercial clubs of Huron, Mitchell, Alexandria, Watertown, and Fulton, S. Dak., the Sioux City Chamber of Commerce, and the Commercial Club of Duluth on behalf of complainants in the *South Dakota Case*; the Milwaukee-Western Fuel Company intervened to prevent a disturbance of the existing parity of rates from Milwaukee and the head of the lakes to South Dakota; the Illinois Coal Traffic Bureau and the Coal Operators' Association intervened on behalf of the defendants in both proceedings; the Northwestern Coal Dock Operators Association intervened on behalf of the complainants in both proceedings; and the complainants in both the *Minnesota Cases* and the *South Dakota Case* filed cross petitions in intervention.

As will be observed from what has been said, the sole issue now before us in the *Minnesota Cases* is the determination of what will be a reasonable basis of rates on coal from the head of the lakes to the specified points in Minnesota, the Dakotas, and Iowa, in order to remove the discrimination and prejudice found in the report above cited. While the complaints cover specified points, nevertheless the issue is such that, whatever conclusion may be reached, it will necessarily affect the entire rate adjustment on this traffic in the territory involved. At the 1919 hearing the only testimony directly introduced by the complainants in the *Minnesota Cases* was such as showed that the prejudice still existed; the position of counsel being, as he had previously announced, that we should find what would be a reasonable basis on the record as it stood in June, 1916, and that reparation should be awarded on that basis, subject to such general increases in the rates as have subsequently been made. It is not necessary, however, to go back to that hearing for many of the requisite facts, as they have been brought down to date in the *South Dakota Case* and made a part of the record in the *Minnesota Cases* by stipulation, as already stated.

In the *South Dakota Case* both the issue of unreasonableness and that of undue prejudice is involved. As stated by counsel, however, the case involves primarily the reasonableness of the rates. As to the issue of undue prejudice, it was stated at the last hearing to involve practically only that alleged to exist between the rates to Minnesota points as compared with rates to points in South Dakota. As the alleged prejudice therefore primarily exists by reason of the lower intrastate rates in effect in Minnesota, the establishment of a reasonable basis for the interstate transportation of coal from the

head of the lakes to Minnesota points, the removal of the discrimination between that traffic and intrastate traffic in Minnesota, and the reasonable extension into South Dakota of whatever scale may be determined upon, will naturally remedy to a great extent this inequality in the rates involved. The paramount question, therefore, is what will be reasonable rates for the transportation of coal from the head of the lakes to the points designated in Minnesota, South Dakota, North Dakota, and Iowa.

While the complaints, as stated, cover both anthracite and bituminous coal, as well as coke and briquets, the great bulk of the movement involves bituminous coal, and therefore the rates on and conditions surrounding that particular traffic will first be discussed. Rates will be stated in amounts per ton of 2,000 pounds. Rates hereinafter referred to as the present rates are those which were in effect immediately prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

When hereinafter referred to the principal defendants will be spoken of by their popular designations, as follows: The Great Northern Railway Company, as the Great Northern; Northern Pacific Railway Company, as the Northern Pacific; Minneapolis & St. Louis Railroad Company, as the M. & St. L.; Illinois Central Railroad Company, as the Illinois Central; Chicago Great Western Railroad Company, as the Chicago Great Western; Chicago, Milwaukee & St. Paul Railway Company, as the Milwaukee; Chicago & North Western Railway Company, as the North Western; Chicago, Rock Island & Pacific Railway Company, as the Rock Island; Minneapolis, St. Paul & Sault Ste. Marie Railway Company, as the Soo line; Chicago, St. Paul, Minneapolis & Omaha Railway Company, as the Omaha; Chicago & Alton Railroad Company, as the Alton; and the Atchison, Topeka & Santa Fe Railway Company, as the Santa Fe.

The prejudice complained of in these cases may be illustrated by the following examples: From Duluth to Sauk Center, Minn., the rate is \$1.50 and the distance 177 miles, while to Bemidji, Minn., the rate is \$2 and the distance 175 miles; to Wadena, Minn., 233 miles from Duluth, the rate is \$1.40, and to Erskine, Minn., 234 miles, the rate is \$2. From Duluth to Big Stone City, Minn., the rate is \$2.10, while to Milbank, S. Dak., 10 miles farther distant, the rate jumps to \$2.80. The rate to Moorhead, Minn., is \$1.80 for 250 miles, while to Casselton, N. Dak., 22 miles beyond, the rate is \$2.80, or an increase of \$1 for the additional 22 miles. The rate to Watertown, S. Dak., is \$2.75 for a haul of 320 miles, while to points in Minnesota in the same general district and approximately the same distance from Duluth the rate is \$2. To Airlie, Minn., the intrastate rate of the Milwaukee is \$2.20 for a haul of 428 miles, while to Flandreau, S.

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Dak., the next station beyond and but 8 miles distant, the rate is \$2.85. Closely allied to this issue of prejudice is the complaint against what the complainants term the "humps" in the rates at various points in the states of Minnesota and North and South Dakota. One or two examples will suffice: From Duluth to Grand Rapids, Minn., the distance via the Great Northern is 111 miles and the rate \$1.10; to Cohasset, Minn., 5 miles beyond, the rate is \$1.30, and to Well's Spur, 4.3 miles beyond Cohasset, the rate is \$1.50, or a jump of 40 cents for the additional distance of but 9.3 miles. From Duluth to Moose Lake, Minn., via the Soo line, the distance is 48 miles and the interstate rate is \$1; to Denham, Minn., 12 miles beyond, the rate is \$1.40, and to Arhyde, Minn., 8 miles more distant, the rate is \$1.50, or a jump of 50 cents for the additional distance of 20 miles. Similar situations are shown to exist on all the defendants' lines at varying distances.

With respect to South Dakota, it is shown that from Yankton to Janousek, a distance of 5 miles, the rate jumps from \$3.15 to \$3.70; and from Janousek to Platte, a distance of 45 miles, the rate jumps 70 cents. Other examples are given showing this extremely rapid increase. As to such adjustments in South Dakota, the defendants urge that, because the rates are being projected into territory of rapidly decreasing traffic density, they are entitled to a proportionate increase in the ton-mile earnings. In opposition to this, complainants direct attention to the decision in *Investigation of Alleged Unreasonable Rates on Meats*, 23 I. C. C., 656, where it was said, page 660: "Whenever a distance of over 500 or 600 miles from these centers [Fort Worth, Oklahoma City, and Wichita] is attained, greater distances run into territory in which traffic is extremely light and where the general level of railroad rates is properly high." Regardless of this condition, however, it is pointed out that the scale of rates prescribed in that case gave decreased ton-mile earnings as the distance increased. Complainants also urge that the ton-mile earnings should properly decrease in connection with this traffic, as the great percentage of the haul is in Minnesota, where traffic density is relatively high.

While the adjustment affects more particularly the interests in the *South Dakota Case*, it will nevertheless be well here to discuss somewhat the so-called blanket or group adjustment, which is said to obtain in connection with this coal traffic. As is well known, the coal received at the head of the lakes comes from the mines in Pennsylvania, West Virginia, Ohio, Maryland, and eastern Kentucky, and is received at those ports via lake lines during the months of open navigation. It also moves to western bank ports on Lake Michigan, such as Chicago, Milwaukee, Sheboygan, Manitowoc, etc.

Coal reaches both the Lake Superior and the Lake Michigan docks through Lake Erie ports at approximately the same charge. The water rate to Duluth for the year 1918 is said to have been 48 cents; to Manitowoc, 50 cents; to Milwaukee, 55 cents; and to Chicago, 65 cents. These rates, however, have varied from year to year; in 1916 they seem to have been uniformly 30 cents to all ports. To practically all points in South Dakota east of the Missouri River the carriers have maintained the same rates from Lake Michigan ports as they have from the head of the lakes. The mines in northern Illinois were also for some time maintained on a parity with the docks mentioned. While, through a readjustment brought about by the increases made under general order No. 28 of the Director General of Railroads, the Illinois mines are not now in all cases on a parity, it is not understood that it is the intention of the carriers to permit this condition to continue. This parity seems to have been maintained from the three sources in question from 1897 to 1918; prior to that time there was apparently no definite or fixed relationship. To points in southeastern Minnesota this general parity seems also to have been maintained for some time from the same sources, but through various changes since 1910 the relationships have been changed. *Illinois Coal Traffic Bureau v. Director General*, 58 I. C. C., 351. There has thus come about what the carriers term a "blanket" or "group" in the coal rates to eastern South Dakota and southeastern Minnesota covering Lake Superior and Lake Michigan ports, and formerly including the northern Illinois mines. This, the complainants in the *South Dakota Case* claim, is wholly unjustified and results in depriving the consumers in eastern South Dakota of the benefit of their proximity to the Lake Superior ports. The complainants in the *Minnesota Cases* reiterate this contention in connection with the rates to points in Minnesota.

The average distance from Duluth, Milwaukee, and Peoria to representative points in 43 counties in South Dakota east of the Missouri River is approximately 485 miles from Duluth, 589 miles from Milwaukee, and 617 miles from Illinois. It is emphasized that the rate to Aberdeen is the most important single rate involved, and the disparity in the distances to this point is even greater than the average shown. From Duluth the average distance via all lines is 457 miles, from Milwaukee 633 miles, and from Peoria 710 miles. It will thus be seen that the distance to eastern South Dakota, on the whole, is 104 miles less from Duluth than from Milwaukee, while to Aberdeen the distance from Duluth is 176 miles less than from Milwaukee and 253 miles less than from Peoria.

It is the contention of the defendants that it is to the interest of the people in South Dakota, as well as of the carriers, that the rates

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from Lake Michigan ports and northern Illinois should be continued on the same basis as the rates from Duluth; that the adjustment has been one of long standing, and is in fact forced by competition. The Coal Operators' Association contends that the rates from Lake Superior can not be considered apart from the Illinois rates, and cites *Victor Mfg. Co. v. S. Ry. Co.*, 21 I. C. C., 222, where we said, page 226:

The rates from the various fields in this coal belt are so correlated that to change one may disturb the entire adjustment. Consequently we can not undertake to pass upon the reasonableness of the rate here involved without considering its relation to the rates from the other coal fields * * *.

The complainants, however, state that they are in no way concerned in the so-called blanket adjustment; that what they want and what they should have is a reasonable line of rates from the head of the lakes; that from a traffic standpoint the basic rate for the transportation of coal to this destination territory is that from Duluth; and that the dealers at that port and the consumers at points of destination should not be penalized by the maintenance of rates from the head of the lakes which net the carriers greater revenue than the service is reasonably worth simply because of the desire of those roads serving Lake Michigan ports and Illinois mines to meet the geographical advantage of Duluth. As to the compelling influence mentioned, attention is called to the fact that the North Western and the Milwaukee operate over 70 per cent of the railway mileage in eastern South Dakota, and that these carriers also serve both Milwaukee and northern Illinois. It is shown that for the fiscal year ended June 30, 1915, there were shipped from the head of the lakes to eastern South Dakota 269,060 tons of bituminous coal; from Lake Michigan ports, 75,791 tons; and approximately the same from Illinois mines. In the year 1914, it is said, eastern South Dakota consumed 760,688 tons of anthracite and bituminous coal, of which 57 per cent originated at the head of the lakes, 8 per cent in Iowa, 19 per cent in Illinois, 16 per cent at Lake Michigan ports, and 5 per cent in Montana and Wyoming. From this it will be observed that South Dakota secures the great bulk of its coal from the Lake Superior ports. Complainants lay considerable stress on our decision in *Commercial Club of Superior, Wis., v. G. N. Ry. Co.*, 24 I. C. C., 96, where rates on grain from South Dakota to Lake Superior and Lake Michigan ports were fixed with relation to the mileage involved, and they argue that there is no reason why rates on coal in the opposite direction should not likewise bear a definite relation to the distance transported. We have, of course, often recognized and approved blanket adjustments in connection with the production of natural resources, but as said in *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, 226.

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In passing upon the reasonableness of the blanket rate we must undoubtedly offset the rate to the nearer point against that to the more distant point. But where the application of such a rate clearly results in imposing unjust and unreasonable transportation charges at the nearer point this fact can not be ignored or excused simply because a rate less than is just is granted at the more distant points.

Under all the circumstances it would seem proper to inquire into the reasonableness of the rates from the head of the lakes independently of the alleged group adjustment, and this will be done.

Coal is not produced in Minnesota, and only a small quantity of lignite is mined at Isabel, in the extreme northwestern part of South Dakota. These states, therefore, are dependent upon outside sources for their supply.

During a single year it was shown that Minnesota consumed 6,536,203 tons, of which 4,151,132 tons came through the lake docks from eastern fields; and the entire state of South Dakota consumed 1,087,000 tons, 477,961 of which came through the lake docks. The defendants, Northern Pacific, Great Northern, Milwaukee, North Western, Omaha, Soo line, M. & St. L., and Rock Island, have submitted separate statements of anthracite and bituminous coal shipments for the fiscal year ended June 30, 1915, which show that from the head of the lakes to Minnesota, North Dakota, South Dakota, and Iowa there was shipped a total of 4,268,145 tons, while from Lake Michigan ports during the same period there were shipped but 803,484 tons. In this connection it is of interest to note that during the year 1915 there were received at the Duluth-Superior harbor 8,343,932 tons of coal. From what has been said it will be observed that the great bulk of the coal supply of this northwestern territory moves through the Lake Superior ports, and the rates therefrom, therefore, become of prime importance.

Transportation conditions from the head of the lakes to the twin cities are said to be ideal, and no material evidence was introduced tending to show that there were any unusual or difficult conditions encountered in connection with any of the transportation here involved.

With respect to the terminal expenses, it is evident that the actual cost favors the head of the lakes. It was shown at one of the earlier hearings that the average cost per car at Duluth was approximately \$3, while at the Illinois mines it averaged \$4.22 per car. Apparently the terminal expense on coal at the head of the lakes is somewhat greater than on general traffic. A witness for the Great Northern testified that the difference in the cost of switching coal and switching other commodities at the head of the lakes would be represented by a relation of \$2.77 on coal to \$1.64 on other commodities.

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Complainants lay considerable emphasis on the fact that the great bulk of the coal movement from the head of the lakes is in box cars, requiring no special equipment, and they also attempt to show that because of this circumstance the empty movement is reduced to a minimum. The major movement eastbound consists of grain shipments, and complainant states that the heaviest movement of this commodity is from September to November, inclusive, and that the heaviest movement of coal is contemporaneous. Defendants, on the contrary, state that the heaviest coal movement is from November to February, both inclusive, January and February being particularly heavy months. During this period the weather conditions are said to be most unfavorable. As representative it may be said that during the months of December, 1915, and January and February, 1916, the Milwaukee moved a total of 3,022 loaded cars into the head of the lakes, and that during the same period it moved 3,743 empty cars into those ports, 98 per cent of which were used for coal loading.

On a car-mile basis varying results are shown for the different roads. The figures of the Great Northern show that for the first seven days in November, 1918, its empty mileage into the head of the lakes was but 4.93 per cent of its outbound loaded coal mileage; and for the same period in January and February, 1919, it was less than 9 per cent of its loaded mileage. A composite statement comprising the Northern Pacific, the Soo line, the Milwaukee, the Omaha, and the Great Northern shows that for the first seven days in November, 1914, the average inbound empty car-mileage of these carriers was 17.6 per cent of the loaded outbound mileage; for the same period in January, 1915, the average inbound empty car-mileage was 57.9 per cent, and in February of that year, 53 per cent. It was stated by a witness for the Northern Pacific that the month of December would show about the same results as November. This same witness stated that during the grain months, which he named as October, November, and December, the inbound loaded cars exceeded the loaded movement outbound. Complainants object to these car-mileage figures on the ground that the defendants have started with the inbound movement in arriving at the mileage traveled rather than with the loaded movement, but no definite figures are submitted to show that the ultimate results would have been different. Complainants also criticise the months selected, but, taking into consideration the month of December, they would seem to be fairly representative. As compared with these data, it is shown that during a test of eight months in 1914 at the mines in Illinois the empty-coal-car mileage of the St. Louis-San Francisco Railroad was found to be 94.79 per cent of its loaded-car mileage, and that the Illinois Central's empty-coal-car mileage incident to the haul

from Illinois to points west of the Mississippi River was approximately 98 per cent of its loaded-coal-car mileage.

Attention is called to the testimony in *Bituminous Coal to Mississippi Valley Territory*, 36 I. C. C., 401, 39 I. C. C., 378, to the effect that the empty-return movement in that territory was a minimum of 60 per cent of the loaded movement; and also to the statistics set forth in *1915 Western Rate Advance Case*, 35 I. C. C., 497, 587. In that case it is shown that for six representative lines—namely, the Santa Fe, the St. Louis–San Francisco, the Rock Island lines, the Omaha, the North Western, and the Missouri, Kansas & Texas—the ratio of empty to loaded mileage for the year 1914 in connection with bituminous coal was 89 per cent, and in connection with all carload freight, 44.26 per cent.

With regard to the use of box cars, defendants claim that the loading is lighter than with gondola cars, and that the methods employed in loading coal at the head of the lakes are such as to strain and damage the equipment. It appears that the average loading of coal at Lake Superior docks is, perhaps, slightly over 35 tons per car as compared with approximately 50 tons at Illinois mines, where heavy equipment is used specially designed for the transportation of coal in train loads. It is stated that automatic box-car loaders are in general use at the head of the lakes, and that the loaders not infrequently convey the coal into the cars with such force as to make them unfit for grain loading without being first repaired. Another method of loading is by the use of what is known as the rocker loader, a device which tips the car in a diagonal position while the coal is chuted into it, and then by alternate elevation and depression of the ends the car is trimmed. These mechanical loaders, however, are not confined to the head of the lakes, but are in use throughout the country. In 1917 there were 68 in use in the state of Illinois. Complainants claim, however, that whatever disadvantage results through the use of these loaders and by reason of the lighter loading is more than compensated by the fact that special equipment is not required and by the possibility of loaded return movements.

The defendants lay much stress on the fact that the traffic density is light in this section of the country, especially in that territory beyond the twin cities, and that it rapidly diminishes as the state of South Dakota is approached and traversed.

By far the major portion of the total mileage of 2,796 miles of the Milwaukee and the North Western in South Dakota is east of the Missouri River. The Great Northern has but 262 miles in this state, all east of the river. For the year 1918 the revenue tonnage per mile of road for the North Western is shown to be as follows:

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	Tons.		Tons.
Minnesota-----	528, 186	Nebraska-----	460, 597
South Dakota-----	217, 798	Wyoming-----	585, 434
Wisconsin-----	1, 304, 853	Illinois-----	2, 820, 527
Iowa-----	1, 514, 047	Whole line-----	1, 156, 708

In the above statement the figures given for South Dakota cover the entire state, whereas only that portion east of the Missouri River is here involved. In 1918 the ton-miles per mile of road east of the river were 220,065, and west of the river, 102,793. Unfortunately, the statistics of the Milwaukee can not fairly be compared, as those submitted include the weight of the equipment as well as of the load. Apparently, however, they would have been somewhat in excess of the figures shown for the North Western. The average density for the three divisions of the Milwaukee, namely, Montevideo, Minn., to Aberdeen; Mitchell, S. Dak., to Aberdeen; Aberdeen to Mobridge, S. Dak., is shown to be 508,075 tons per mile of road. For other data it has been necessary to go back to earlier exhibits. In 1914 it was shown that the ton-miles per mile of road for all lines in the state of Minnesota were 960,859, and in the state of South Dakota, 243,615. The revenue tonnage per mile of road for all lines in Kansas was 549,822. The tonnage of the Milwaukee in Minnesota is shown to have been 905,209 tons per mile of road, and in South Dakota, 410,343.

For our old accounting group VI, which comprised North Dakota and South Dakota east of the Missouri River, Illinois, Iowa, Minnesota, Wisconsin, upper Michigan, and Missouri north of the Missouri River, the tons of revenue freight per mile for the year ended June 30, 1914, were 906,835.

It is shown that 27 counties in eastern South Dakota, some of which border Minnesota, have a total population which averages 16.67 persons per square mile; that in 24 counties in western Minnesota the square-mile population is 20.76; that for the entire state of Minnesota the square-mile population is approximately 25, and for the entire state of South Dakota 12. Sufficient has been shown to indicate clearly that the traffic density in the state of Minnesota approximates the average for the western trunk line territory, and that in South Dakota it is considerably below this average. With respect to the latter state, however, the complainants in the *South Dakota Case* contend that traffic density should not be controlling, as the defendant lines operate for but a short distance in that state, 72 per cent of the mileage involved being in Minnesota where the traffic density is relatively high. Attention is also directed to the fact that traffic-density figures might be high in certain instances and yet represent a low-grade traffic, while the lower-density figures

might represent a high grade of traffic. In this connection complainant shows that of the traffic originating on the lines of the Milwaukee and the North Western in South Dakota 56 per cent consisted of the products of agriculture, said by it to be the most profitable commodities handled in railway commerce, while for the entire systems of these carriers the products of agriculture supplied but 21.86 per cent of their entire traffic.

To offset further the lower traffic density in South Dakota, a comparison of the valuation of representative lines in that state, fully equipped for operation, with recognized valuation in contiguous states, was submitted at one of the earlier hearings. They do not seem to have been brought down to date. As of June 30, 1909, it was shown that this reproduction value was approximately half of that of representative lines in Iowa, Wisconsin, and Minnesota. Defendants, however, show as the result of operations in South Dakota, taken from the report of the Board of Railroad Commissioners of South Dakota for 1914, the following ratios of operating expenses to operating revenues: North Western, 113.09 per cent; Omaha, 104.21 per cent; Great Northern, 105.02 per cent; Minneapolis & St. Louis, 92.08 per cent; Soo line, 301.86 per cent; and Milwaukee, 64.98 per cent. Complainant shows that the operating ratio in 1915 for the entire Milwaukee system was 67.78 per cent, while in South Dakota it was but 65.87 per cent. The method employed by the North Western in apportioning its revenues and expenses to South Dakota is seriously objected to by complainants in the *South Dakota Case*. Unquestionably, it is not as satisfactory as could be desired. However, in the establishment of rates on a single commodity the fact that the carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes the bulk of the traffic transported.

Reference was made in the *Holmes & Hallowell Case*, *supra*, to the history of the rate structure in Minnesota. In this connection various exhibits have now been filed. These exhibits show that from 1898 to 1908 there was practically no change in the rates on this traffic. In 1903, as the result of an order of the Minnesota commission, a general reduction was brought about; and in 1906 a further reduction was made by the carriers in an effort, they say, to stem the agitation in that state for still lower rates. This effort, however, was without effect, and in 1907 the Minnesota legislature prescribed maximum commodity rates for the transportation of traffic between points in that state. The application of these rates, however, was enjoined by the federal courts, and not until 1913, following the *Minnesota Rate Cases*, 230 U. S., 352, did they become effective.

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Since 1918 the rates on coal have remained substantially without change until the increase was allowed in *The Fifteen Per Cent Case*, which was followed by a similar increase in connection with intrastate traffic. In 1918 further increases were made under general order No. 28 of the Director General of Railroads. It should be said that no increase was made in the rates on coal moving intrastate within the state of Minnesota following the *1915 Western Rate Advance Case, supra*. While in numerous instances the present rates are lower than they were in 1898, still, taking the present adjustment as a whole, it would appear to be somewhat higher than it was 20 years ago.

Taking the rate changes to Aberdeen as reflecting the history of the South Dakota adjustment, it is found that in 1897 the rate on bituminous coal was \$3.25 from Duluth, reduced to \$2.75 in 1898, further reduced to \$2.55 in 1906, increased to \$2.70 in 1917, to \$3.10 in 1918, and to \$3.15 in 1919.

The Minnesota authorities did not reduce the rates from Duluth to the twin cities, and in this connection it should be said that there is no attack on the present rate on bituminous coal to those points. The defendants, however, object to the Duluth-twin cities rate being taken as a reasonable rate for the distances involved from and to those points, for the reason, they assert, that the rate from Duluth was "established for no other purpose than that of allowing eastern coal miners or dealers to put their coal down in the twin cities in competition with Illinois and Indiana mines." But it is also to be noted that defendants claim that the rates from Illinois mines to the twin cities are compelled by reason of the rates through Duluth. It should be stated that Illinois coal is worth approximately \$1 a ton less than the eastern coal. At one of the earlier hearings it was said that an advantage of 75 cents in the rate was sufficient to permit Illinois operators to compete with the coal from the eastern fields. This difference in value would seem already to be fully covered by the freight rate from the eastern mines to the Lake Superior docks, so that at these docks this coal might fairly be said to be on an equality with the Illinois coal at the mines.

Complainants in both the *Minnesota Cases* and in the *South Dakota Case* submit many comparisons by which it is sought to show that the rates under attack are unduly high. Defendants likewise put forward comparisons to show the contrary. The statements submitted by complainants in the *Minnesota Cases* embrace principally rates from west-bank Lake Michigan ports, from Illinois mines, and rates fixed in *Bituminous Coal to Mississippi Valley Territory*, 39 I. C. C., 378. The rates shown from Lake Michigan ports are of little value, for the reason that they are unquestionably
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influenced by the rates from the head of the lakes. The use of the rates fixed in the *Mississippi Valley Case*, *supra*, is objected to by defendants on the ground that these rates were not fixed as reasonable *per se*, but established only with relation to the lower rates in effect to the farther distant points which were permitted to be maintained in contravention of the provisions of the fourth section by reason of water competition. The rates from the Illinois fields are objected to by defendants on the ground that many of them are depressed by reason of the competitive conditions obtaining at the twin cities. While this competitive influence no doubt exists at these points, it is doubtful that it is of compelling force at points as far back as is contended by defendants. For the shorter distances, complainants state, they have been unable to secure satisfactory interstate rates for comparison, and that consideration must necessarily be given to intrastate scales. With respect to the comparisons submitted from Iowa to interstate points, it appears from a report by C. E. Leshner, of the United States Geological Survey, that but little of the coal produced in Iowa is shipped out of that state. In fact, for the year 1917 only 5 per cent of the total production was shipped to other states, of which 31,000 tons were moved to Minnesota and 30,000 tons to South Dakota. Accurate and reliable results can not be obtained from a comparison based on published rates, irrespective of the tonnage moved. It is also to be noted that rates from Indiana mines to Illinois points are used for comparative purposes. It is doubtful that there is any substantial movement under those rates. It is difficult to conceive of a movement from Dugger, Ind., to Randolph, Ill., a point within the Springfield coal group.

The comparisons originally submitted by the complainants in the *Minnesota Cases* have now been supplemented by the adoption therein of comparisons made by complainants in the *South Dakota Case*. The following tables comprise points that are believed to be fairly representative of the rates under attack in the *Minnesota Cases*, together with comparisons taken from the various exhibits as typical for similar distances.

The first table sets forth representative rates under attack, preceded by figures designating the basic distances used; the second table comprises comparisons submitted by complainants selected as typical for the corresponding basic distances; the third table covers comparisons by defendants; and the fourth table shows the distance scales of rates applicable in the states shown on intrastate traffic.

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Representative rates under attack.

Basic distances.	Representative points involved in Minnesota Cases.	Railroad location.	Distances from Duluth.	Present rates (bituminous coal).	Ton-mile revenue.
<i>Miles.</i>			<i>Miles.</i>		<i>Miles.</i>
50	Sandstone, Minn.....	G. N.....	63	\$1.10	17.4
75	Hinckley, Minn.....	G. N. and N. P.....	72	1.10	15.2
100	Grandy, Minn.....	G. N.....	103	1.20	11.6
150	St. Cloud, Minn.....	G. N.....	140	1.50	10.7
175	Richmond, Minn.....	G. N.....	160	2.00	12.5
200	Farmington, Minn.....	C. M. & St. P.....	177	1.90	10.7
225	Green Isle, Minn.....	M. & St. L.....	197	2.25	11.4
250	Maynard, Minn.....	G. N.....	223	2.20	9.8
275	Zumbro Falls, Minn.....	C. M. & St. P.....	257	2.24	8.7
	Haggart, N. Dak.....	N. P.....	257	2.50	9.7
	Herman, Minn.....	G. N.....	271	2.30	8.4
	Cassellton, N. Dak.....	N. P.....	272	2.80	10.2
	Lidgerwood, N. Dak.....	Soo.....	301	2.80	9.3
300	South Shore, S. Dak.....	G. N.....	301	2.66	8.8
	Ada, Minn.....	G. N.....	304	2.40	7.9
	Enderlin, N. Dak.....	Soo.....	340	2.90	8.5
350	Claremont, S. Dak.....	G. N.....	352	3.03	8.6
	Currie, Minn.....	Omaha.....	354	2.55	7.2
400	Langdon, N. Dak.....	G. N.....	401	2.10	7.7
	Merrill, Iowa.....	I. C.....	404	2.95	7.3
450	Leeds, N. Dak.....	N. P.....	453	2.30	7.2
500	Maxbass, N. Dak.....	G. N.....	507	2.70	7.2

Complainants' comparisons.

Basic distances.		Distances.	Rates.	Ton-mile revenue.
<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
50	From Chicago, Ill., to Morris, Ill.....	62	\$1.10	17.7
50	From Dugger, Ind., to Holmsburg, Ind.....	62	.90	14.5
75	From Dugger, Ind., to Toledo, Ill.....	76	1.20	15.7
100	From Dugger, Ind., to Mattoon, Ill.....	103	1.40	13.5
100	From Des Moines, Iowa, to Gordonsville, Minn.....	107	1.70	15.3
150	From Dugger, Ind., to Bearsdale, Ill.....	141	1.40	9.9
150	From Illinois and Indiana mines to Davenport, Iowa.....	167	1.60	9.5
150	From Spring Valley, Ill., to Watertown, Wis.....	180	1.50	10
175	From Dugger, Ind., to Randolph, Ill.....	172	1.40	8.1
175	From Des Moines, Iowa, to Castle Rock, Minn.....	186	1.70	9.1
200	From Chicago, Ill., to Dale, Wis.....	202	1.90	9.4
225	From Moline, Ill., to Pleasant Creek, Iowa.....	229	1.60	6.9
250	From Centerville, Iowa, to Albert Lea, Minn.....	239	1.70	6.5
250	From Moline, Ill., to Spechts Ferry, Iowa.....	269	1.80	6.7
275	From Des Moines, Iowa, to Bemis, S. Dak.....	265	2.20	8.3
275	From Moline, Ill., to Spechts Ferry, Iowa.....	269	1.80	6.7
300	From Moline, Ill., to Clayton, Iowa.....	300	1.90	6.3
350	From Centerville, Iowa, to Elkton, S. Dak.....	338	2.20	6.1
400	From Iowa mines to Yankton, S. Dak.....	401	2.60	6.5
400	From Spring Valley, Ill., to Mankato, Minn.....	422	2.10	4.6
450	From Hudson, Wyo., to Creston, S. Dak.....	456	2.10	5.3
450	From Des Moines-Buxton, Iowa, to O'Neill-Crookston, Nebr.....	507	2.68	7.16
500	From Roundup, Mont., to Bowdle, S. Dak.....	506	2.30	6.5

1 Average distance.

2 Weighted average distance.

3 Average rate.

Defendants' comparisons.

Basic distances.		Dis- tances.	Rates.	Ton- mile revenue.
<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
175	From Appalachia, Va., to Marion, N. C.....	178	\$2.30	12.9
175	From Sheridan, Wyo., to Acton, Mont.....	241		9.5
200	From Sheridan, Wyo., to Argentine, S. Dak.....	175	2.40	12.6
200	From La Salle, Ill., to Mount Auburn, Iowa.....	208	2.60	12.4
225	From Sheridan, Wyo., to Edgemont, S. Dak.....	190	2.15	11.3
250	From Pocahontas district to Winston-Salem, N. C.....	223	2.60	11.6
250	From Sheridan, Wyo., to Joder, Nebr.....	* 262	2.70	10.3
250	From La Salle, Ill., to Keokuk, Iowa.....	262	2.80	10.7
275	From Sheridan, Wyo., to Joder, Nebr.....	257	2.15	8.3
275	From La Salle, Ill., to Maple Hill, Iowa.....	262	2.80	10.7
300	From Sheridan, Wyo., to Marsland, Iowa.....	270	2.60	9.3
350	From Pocahontas district to Southeastern group (Columbia, S. C.).....	298	3.10	10.4
400	From Wyoming mines to South Dakota west of Missouri River..	358	3.00	8.37
450	From Trinidad, Colo., to Kansas points.....	* 404	2.69	6.6
450	From Peoria, Ill., to Seward, Nebr.....	* 436	3.92	8.9
500	From Peoria, Ill., to York, Nebr.....	470	3.25	6.9
500	From Iowa mines to South Dakota east of Missouri River.....	497	3.59	7.24
500		* 514	2.94	5.7

* Short line distance, 178 miles; via Southern Railway, 241 miles.

* Average distance.

State distance scales.

Basic distances.	Minne- sota scale.	Iowa scale.	Nebraska scale.	Illinois scale.
<i>Miles.</i>				
50.....	\$1.00	\$1.00	\$1.00	\$1.13
75.....	1.10	1.30	1.30	1.33
100.....	1.20	1.50	1.50	1.39
150.....	1.40	1.60	1.70	1.60
175.....	1.50	1.70	1.90	1.55
200.....	1.60	1.80	2.00	1.60
225.....	1.70	1.80	2.10	1.64
250.....	1.80	1.90	2.20	1.68
275.....	1.90	1.90	2.30	1.73
300.....	2.00	2.00	2.50	1.77
350.....	2.10	2.10	2.70	1.86
400.....	2.20	2.20	2.80	1.91
450.....	2.30	2.30	3.00	.....
500.....	2.40	2.50	3.20	.....

Defendants direct particular attention to the rate of \$2.40 from Duluth to Sioux Falls, S. Dak., which was found reasonable in *Traffic Bureau, Sioux Falls Commercial Club, v. Ry. Co.*, 50 I. C. C., 610. The conclusions there reached are final upon the record made, but subsequent evidence may warrant a different finding, and the issues are not *res judicata* here. *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684; *Northern Potato Traffic Asso. v. C. & A. R. R. Co.*, 44 I. C. C., 426.

Defendants submit statements showing averages under the rates at present in effect based on actual shipments during the six months ended March 31, 1919, which are set forth in the following table. The averages here shown include, of course, to some extent the legislative rates prescribed by the state of Minnesota:

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Averages under rates at present in effect.

	Totals of cars.	Average distances hailed.	Average rates.		Car-mile revenue.
			Per ton.	Per ton- mile.	
<i>Great Northern:</i>		<i>Miles.</i>		<i>Mills.</i>	<i>Cents.</i>
From head of lakes—					
To twin cities.....	6, 873	131. 9	\$1. 40	9. 23	40
To points in Minnesota on or north of St. Paul-Breckenridge line of Great Northern.	7, 68	165. 4	1. 48	8. 97	29
To points in Minnesota south of said line....	1, 263	200. 5	2. 14	8. 24	26
<i>Omaha:</i>					
From head of lakes—					
To twin cities.....	1, 029	174	1. 40	8. 05	32
To points in Minnesota other than twin cities.....	1, 045	295	2. 26	7. 69	31
<i>Northern Pacific:</i>					
From head of lakes—					
To twin cities.....	5, 672	154. 5	1. 40	9. 06	39
To points in Minnesota on or north of St. Paul-Breckenridge line of Great Northern.	4, 313	151. 5	1. 45	9. 62	37
To points in Minnesota south of said line....	365	219. 5	1. 96	8. 47	34
<i>See line:</i>					
From head of lakes—					
To twin cities.....	224	158. 9	1. 40	9. 06	33
To Minnesota other than twin cities.....	1, 435	135. 4	1. 24	9. 2	24
<i>C. & N. P.:</i>					
From head of lakes—					
To points in Minnesota (except Merriam Park).....	↓ 1, 030	273	2. 10	7. 7	29
To Merriam Park.....	1	159	1. 40	8. 8	38

Summarizing the figures of the preceding table, the following statement is obtained:

Average distance to twin cities.....	miles.....	158. 6
Average rate to twin cities.....		\$1. 40
Average revenue per ton-mile.....	mills.....	8. 44
Average car-mile revenue.....		\$0. 86
Average distance to other points in Minnesota.....	miles.....	214. 8
Average rate to other points in Minnesota.....		\$1. 79
Average revenue per ton-mile.....	mills.....	8. 5
Average car-mile revenue.....		\$0. 80

Complainants in the *Minnesota Cases* show rates to practically all points of destination involved. This shows an average present rate of \$2.50 on soft coal for an average distance of 299 miles.

A statement is also submitted covering actual shipments made by five of the complainants in the *Minnesota Cases*, which shows that for the year ended June 1, 1913, the average haul was 312 miles, on an average rate of \$2.08, with an average net load per car or 28.8 tons. This rate, plussed under *The Fifteen Per Cent Case* and general order No. 28, became \$2.60.

We are asked to find that coal is a low-grade commodity and, in proportion to the earnings of all freight over the lines of the defendants, pays more than its proportionate share of the total transportation revenue. The following statement shows the percentage of coal tonnage of the lines named to all freight, the ton-mile earnings
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on all freight, and the average haul of all freight. These data are taken from the annual reports on file with us for the year 1919.

Carriers.	Percent- age of coal tonnage to all freight.	Ton-mile revenue on all freight.	Average haul of revenue freight.
	Per cent.	Mills.	Miles.
Northern Pacific.....	15.96	9.61	354
Great Northern.....	10.1	9.7	291
Milwaukee.....	13.3	9.24	255
North Western.....	14.5	11.1	159
Chicago Great Western.....	14	8.87	275
Rock Island.....	16.2	10.94	258
Omaha.....	12.4	11	156
So.	7.59	9.85	224
Minneapolis & St. Louis.....	22.44	10.34	163
Illinois Central.....	33	7.59	261
Chicago & Alton.....	37	8.66	194
Santa Fe.....	14.71	12.51	247

To the contention of the complainants that the coal rates are producing more than their share of the defendants' revenue, the defendants reply that practically all of their rates in this general territory are below normal, due to the low level of intrastate rates which have been forced upon them. In this connection attention may properly be directed to *Public Utilities Commission of Idaho v. O. S. L. R. R. Co.*, 33 I. C. C., 103, where the rates of the Oregon Short Line on bituminous coal were under attack, but were not found to be unreasonably high. The rates yielded an average revenue of 8.74 mills per ton-mile for hauls ranging from 58 to 563 miles, as compared with 9.44 mills per ton-mile on all freight for an average haul of 286 miles.

As already stated, complainant in the *South Dakota Case* submits that the rate to Aberdeen is the most important single rate in the South Dakota structure. It takes the position that unduly circuitous routes should not be considered to the detriment of the shippers and the public, and urges that the line of the North Western constitutes such a route. On the other hand, it does not contend that the direct lines should govern to this particular territory, but suggests that consideration may properly be given to average distances via all lines not unduly circuitous. It appears that the short-line distance from Duluth to Aberdeen is 380 miles via the Great Northern, while via the North Western it is 541 miles. We recognized this contention in *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., 555, where we said at page 563:

We must consider the entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado common points via reasonably direct lines.

It was stated by defendants, and not seriously questioned by complainants, that rates to Aberdeen, Watertown, Huron, Sioux Falls,

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and Yankton were controlling for the entire section of South Dakota east of the Missouri River. The following table sets forth the present rates from Duluth to these points, and to Mobridge, Pierre, and Chamberlain, which have been added as representative destinations on the extreme western edge. The average distance shown to Aberdeen does not include the route of the North Western.

From Duluth to—	Mileage.		Rates.	Ton-mile revenue.
	Distances.	Character.		
	<i>Miles.</i>			<i>Mills.</i>
Aberdeen.....	380 429 411 390	Short line..... Average..... Weighted average..... Short line.....	\$3.15	8.3 7.3 7.6 8
Huron.....	426 412 406	Average..... Weighted average..... Short line.....		7.2 7.6 7.7
Yankton.....	479 475 541	Average..... Weighted average..... Short line.....		6.6 6.6 7.9
Mobridge.....	597 600	Short line..... Weighted average.....		7.4 7.4
Pierre.....	615 321	Weighted average..... Short line.....	4.45	6.6 8.5
Chamberlain.....	373 373	Weighted average..... Short line.....		7.3 8.5
Watertown.....	344 410	Short line..... Weighted average.....	2.95	7.3 7.2
Sioux Falls.....				

Defendants show the rates in effect from Duluth to a central point in each county in South Dakota east of the Missouri River. The average distance to these points is 495 miles; the average rate, \$3.28; and the average revenue per ton-mile, 6.6 mills. As compared with this, the complainants show the average short-line mileage to 24 selected points in eastern South Dakota to be 477 miles, with an average rate of \$3.51.

The weighted average distances of 373, 411, 475, 541, 600, and 615 miles shown in the above tabulation will be used for comparative purposes. From the many comparisons submitted by complainant in the *South Dakota Case* selections which seem to be fairly representative have been made, corresponding as nearly as possible with these distances, and are as follows:

From—	To—	Distances.	Rates.	Ton-mile revenue.
		<i>Miles.</i>		<i>Mills.</i>
For 373 miles:				
Kansas, Arkansas, and Oklahoma mines.....	Omaha, Nebr.....	1 367	\$2.00	5.4
Illinois and Indiana mines.....	Dubuque, Iowa.....	1 286	2.00	5.1
Red Lodge, Mont.....	Dickinson, S. Dak.....	361	2.90	7.4
For 411 miles:				
Duluth, Minn.....	Des Moines, Iowa.....	427	2.70	6.3
Arkansas and Oklahoma mines.....	Omaha, Neb.....	1 435	3.10	7.1
Peoria, Ill.....	Storm Lake, Iowa.....	497	2.85	6.5
Wyoming mines.....	Black Hills division of North Western in South Dakota.	1 444	2.72	6.1

From—	To—	Distances	Rates	Ton-mile revenue.
		<i>Miles.</i>		<i>Miles.</i>
For 475 miles:				
Peoria, Ill.....	Council Bluffs, Iowa.....	466	2.70	5.3
Hudson, Wyo.....	Lead, S. Dak.....	475	2.80	5.9
Duluth, Minn.....	Bancroft, Nebr.....	494	3.10	6.3
Hudson, Wyo.....	Points on North Western in Nebraska.	1 482	3.17	6.5
For 541 miles:				
Sheridan, Wyo.....	McIntosh, S. Dak.....	547	4.15	7.6
Glen Rock, Wyo.....	Scribner, Nebr.....	550	3.20	5.3
Roundup, Mont.....	Mina, S. Dak.....	547	3.30	6.1
For 600 and 615 miles:				
Sheridan, Wyo.....	Grand Island, Nebr.....	602	3.70	6.1
Chicago, Ill.....	Clements, Kans.....	605	4.20	6
Glen Rock, Wyo.....	Omaha, Nebr.....	613	3.20	5.2

¹ Average distances.

A number of statements setting forth various rates on coal are also submitted by defendants to show that the present rates to these South Dakota points are not unduly high. From these the following selections have been made as being fairly typical:

From—	To—	Distances	Rates	Ton-mile revenue.
		<i>Miles.</i>		<i>Miles.</i>
For 373 miles:				
Poconantas district.....	Southeastern group (Columbia, S. C.).	358	\$3.00	5.3
For 411 miles:				
Trinidad, Colo.....	Texas points.....	1 434	3.80	5.7
Trinidad, Colo.....	Kansas points.....	1 436	3.93	9
For 475 miles:				
Peoria, Ill.....	Various Nebraska points.....	1 467	3.29	7
Illinois and Indiana mines.....	Iowa points.....	1 476	2.72	5.7
For 541 miles:				
Cedar Point, Ill.....	South Dakota points.....	1 580	3.14	5.4
Kirby, Wyo.....	Edgemont, S. Dak.....	519	3.00	5.7
For 600 and 615 miles:				
Peoria, Ill.....	Mitchell, S. Dak.....	591	3.20	5.4
Illinois points (Peoria).....	Central point in each county in South Dakota east of Missouri River.	1 617	3.42	5.5
DuQuoin, Ill.....	Ellsworth, Kans.....	575	4.35	7.5

¹ Average distances.

On the whole, the complainants in both the *Minnesota Cases* and the *South Dakota Case* make the same allegations concerning the rates in effect on anthracite coal as they do with respect to the rates on bituminous. One exception should be noted, namely, that the complainant in No. 6194 attacks the rate of \$1.25, which was in effect on anthracite from the head of the lakes to the twin cities and to Minnesota Transfer during the period that the federal injunctions against the legislative rates of Minnesota were in force, as unreasonable to the extent that it exceeded the rate of \$1.20 fixed by the Minnesota legislature. Under the advances allowed in *The Fifteen Per Cent Case* and under general order No. 28 the rate of \$1.90 became \$1.65, which was further increased to the present rate of \$1.70 by reason of the disposition of fractions as provided for in general order No. 28. The rate of \$1.25 would likewise become \$1.70.

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Anthracite coal originates in the Pennsylvania fields and moves principally through Buffalo, N. Y., and other Lake Erie ports via water to Lake Superior docks. In this northwestern territory it encounters no competition except that with the same eastern coal moving through Lake Michigan ports and such as exists where both anthracite and bituminous coal may be used for the same purposes. As has already been stated, anthracite moves in substantially less volume than does bituminous coal. For the fiscal year ended June 30, 1915, it is shown that there were shipped from the head of the lakes to the territory here involved 3,028,692 tons of bituminous, while but 1,239,453 tons of anthracite coal moved. For the six months ended March 31, 1919, it is shown by five of the principal defendants that 1,524,434 tons of bituminous coal moved via their lines, and but 640,434 tons of anthracite. From this it will be seen that anthracite comprises approximately one-third of the total coal movement. It is of interest to note that during this period of six months these five carriers transported 247,238 tons of anthracite to the twin cities and 204,469 tons to the balance of the state of Minnesota. In other words there were shipped to the twin cities some 40,000 tons more than to all the rest of the state. Both bituminous and anthracite move in the same equipment, the latter, however, loading slightly lighter, moving in substantially less volume, and being somewhat more valuable. In October, 1919, the price of chestnut coal at Duluth was \$10.20 a ton, and of Pocahontas smokeless lump \$9. The average selling price of all grades of hard coal was \$9.78, and of all grades of soft coal \$6.65.

The testimony of the various witnesses was confined almost wholly to the bituminous coal situation, although many of the exhibits cover the anthracite adjustment as well. These exhibits reflect much the same conditions as obtain in connection with the bituminous traffic; the same inconsistencies in the rates to the various points are present, both as to the rapid graduation or "humps" and the prejudicial character of many of the rates. One phase of some of the complaints is the difference between, or the varying differentials in, the rates on anthracite and bituminous coal. Into North Dakota from the head of the lakes the differential on anthracite over bituminous does not exceed 10 cents. In certain instances the rates on anthracite and bituminous coal are the same from the head of the lakes to South Dakota; at Watertown, Huron, and Aberdeen the differential is 25 cents; at Yankton and Sioux Falls it is 15 cents; at Chamberlain, 35 cents. To points in Minnesota the discrepancies are even greater. At the twin cities the differential is 30 cents—\$1.70 on anthracite as against \$1.40 on bituminous. At Waverly, Minn., 187 miles from
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Duluth, the differential is 10 cents; at Bemidji, 180 miles from Duluth, the differential is 40 cents; at Kenyon the difference is 70 cents, and the distance 204 miles from Duluth; while at Glencoe, 209 miles from Duluth, the difference is 25 cents. This is sufficiently illustrative of the wholly inconsistent alignment of these rates.

Complainant in the *South Dakota Case* states: "We have gone into no great detail with reference to hard coal rates. We are showing the situation with reference to soft coal and suggesting the construction of rates on anthracite by the addition of certain arbitraries over the bituminous rates." The suggested difference in connection with rates to South Dakota points is 10 cents. The complainants in the *Minnesota Cases* suggest specific rates on anthracite, which are practically based on the Minnesota scale. Under this scale the differential at 5 miles is 10 cents; at 150 miles, 80 cents; increased to 50 cents at 400 miles.

There certainly seems to be no support for such an incongruous adjustment as obtains in this territory in connection with the rates on anthracite coal. From the record it would appear that these rates may properly be on a somewhat higher basis than the bituminous coal rates, except for short distances.

Little testimony has been submitted respecting the rates on coke and briquets; certainly no sufficient showing has been made to warrant a disturbance of the present relationship. It is understood that under the present adjustment coke is accorded the same or slightly higher rates than those applicable on hard coal, and that the soft-coal rates apply on briquets. This seems to be fairly in line with adjustments elsewhere.

Complainants in the *Minnesota Cases* propose a scale of rates for the transportation of anthracite and bituminous coal that is the same as the present legislative scale in that state, not, as they allege, because it is the Minnesota state scale, but because under all the circumstances it seems to be reasonable and just. To this the defendants seriously object on the ground that those rates are altogether too low.

Complainants in the *South Dakota Case* urge the impracticability of a straight distance scale to all points in eastern South Dakota. At the present time there exists a blanket extending from Aberdeen via the line of the Milwaukee through Redfield, Wolsey, and Mitchell to Yankton. These points are on the western edge of the group, which extends irregularly eastward for approximately 50 miles. Because of the various lines reaching this territory and the circuitry of some of them as compared with the direct routes, it is not deemed expedient to place these points on a strictly distance basis. Instead of so extensive a blanket as now exists, however, the

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complainants suggest dividing it on the line of the North Western at Huron, according the northern district a rate of \$2.85, and the southern group a rate of \$2.90. To points east of this group complainant asks that the rates be graded logically into the rates at the Minnesota line; and west thereof graded upward to \$3.35 at Mobridge, and \$3.65 at Chamberlain and Pierre. The defendants' principal criticism of this suggested adjustment seems to be of the proposed rates themselves, claiming that they are unsupported by the evidence, and that their present rates have not been shown to be unreasonable. We see no reason why the rates to eastern South Dakota should be on a different basis than to western Minnesota.

We find that the rates of defendants for the interstate transportation of anthracite and bituminous coal from Duluth, Superior, and other points at the head of the lakes taking the same rates to the destinations specified in the various complaints in Minnesota, North Dakota, and South Dakota east of the Missouri River are, and for the future will be, unreasonable to the extent that they exceed the rates per ton of 2,000 pounds set forth in the following table for the distances shown, subject to the increases authorized in *Increased Rates, 1920, supra*, which rates are found to be reasonable and just for the transportation of the traffic in question; the rates applicable from Duluth under such distance scale to be applied from the other head-of-the-lakes ports. Distances under such scale should be computed via the shortest routes, embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic:

Distances.	Bituminous coal.	Anthracite coal.	Distances.	Bituminous coal.	Anthracite coal.
30 miles and under.....	\$0.80	\$0.80	270 miles and over 260.....	\$2.20	\$2.35
40 miles and over 30.....	.90	.90	280 miles and over 270.....	2.25	2.40
50 miles and over 40.....	.90	1.05	290 miles and over 280.....	2.30	2.45
60 miles and over 50.....	1.00	1.15	300 miles and over 290.....	2.35	2.50
70 miles and over 60.....	1.00	1.15	310 miles and over 300.....	2.40	2.55
80 miles and over 70.....	1.10	1.25	320 miles and over 310.....	2.45	2.60
90 miles and over 80.....	1.10	1.25	330 miles and over 320.....	2.50	2.65
100 miles and over 90.....	1.20	1.35	340 miles and over 330.....	2.55	2.70
110 miles and over 100.....	1.20	1.35	350 miles and over 340.....	2.60	2.75
120 miles and over 110.....	1.30	1.45	360 miles and over 350.....	2.65	2.80
130 miles and over 120.....	1.30	1.45	370 miles and over 360.....	2.70	2.85
140 miles and over 130.....	1.40	1.55	380 miles and over 370.....	2.75	2.90
150 miles and over 140.....	1.50	1.65	390 miles and over 380.....	2.80	2.95
160 miles and over 150.....	1.60	1.75	400 miles and over 390.....	2.85	3.00
170 miles and over 160.....	1.70	1.85	425 miles and over 400.....	2.95	3.10
180 miles and over 170.....	1.75	1.90	450 miles and over 425.....	3.05	3.20
190 miles and over 180.....	1.80	1.95	475 miles and over 450.....	3.15	3.30
200 miles and over 190.....	1.85	2.00	500 miles and over 475.....	3.25	3.40
210 miles and over 200.....	1.90	2.05	525 miles and over 500.....	3.35	3.50
220 miles and over 210.....	1.95	2.10	550 miles and over 525.....	3.45	3.60
230 miles and over 220.....	2.00	2.15	575 miles and over 550.....	3.55	3.70
240 miles and over 230.....	2.05	2.20	600 miles and over 575.....	3.65	3.80
250 miles and over 240.....	2.10	2.25	625 miles and over 600.....	3.75	3.90
260 miles and over 250.....	2.15	2.30	650 miles and over 625.....	3.85	4.00

We further find that to Minnesota, South Dakota, and North Dakota the rates assailed are, and for the future will be, unduly prejudicial to the extent that they exceed the rates contemporaneously in effect for the intrastate transportation of like traffic from Duluth to points in Minnesota for like distances, or to the extent that they are relatively higher, distance considered, than the rates in effect on such intrastate traffic.

We further find that defendants which have indirect routes to points of destination reached by more direct lines or routes may meet the rates established via such direct lines or routes in accordance with the above-prescribed distance scale of rates, and maintain higher rates to intermediate points, provided that the rates to such intermediate points shall not exceed the rates prescribed in the foregoing scale for the distances shown, and provided further that they do not exceed the rates to such intermediate points via the shortest route as hereinbefore described. In no event may the rate to an intermediate point exceed the rate for the same distance via the shorter route to the competitive or common point.

The claims for reparation made by the complainants in the *Minnesota Cases* are denied. Those complainants admit that no damage has been shown by reason of the undue prejudice found to exist; and, furthermore, we are here prescribing a new rate adjustment which contemplates both increases and reductions.

The rates on anthracite and bituminous coal from the head of the lakes to the points in the state of Iowa have not been shown to be unreasonable or unduly prejudicial.

The complaints in Dockets Nos. 6357 (Sub-No. 15); 6357 (Sub-No. 18); 6715 (Sub-No. 21); and 7498 (Sub-No. 2) were formally dismissed in our original report, but were included in the order reopening the various proceedings. They do not include coal from the head of the lakes and will therefore be again dismissed. Neither do the complaints in Dockets Nos. 6357 (Sub-No. 19); 6715 (Sub-No. 2); 7656; 7656 (Sub-No. 1); and 8119 (Sub-Nos. 3, 4, 15, 27, and 31) relate to coal from the head of the lakes, and they, too, will be dismissed.

An appropriate order will be entered.

COI. C. C.

No. 11319.
FARMERS FUEL COMPANY
v.
**DIRECTOR GENERAL, AS AGENT, CHICAGO & ALTON
RAILROAD COMPANY, ET AL.**

Submitted November 3, 1920. Decided March 1, 1921.

1. Higginsville Switch Company found not to be a common carrier subject to the interstate commerce act.
2. Rates on coal, in carloads, from junctions with the switch company at Higginsville, Mo., to destinations in Missouri and Kansas, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Prayer for joint rates denied. Complaint dismissed.

S. C. Bates for complainant and the Higginsville Switch Company.
Charles M. Miller for Director General of Railroads and Chicago & Alton Railroad Company.

C. C. P. Rausch for Missouri Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions to the report proposed by the examiner were filed by defendant Higginsville Switch Company, hereinafter called the switch company.

Complainant, a corporation operating coal mines served by the switch company, near Higginsville, Mo., alleges that the combination rates on coal, in carloads, from its mines to destinations in Missouri and Kansas on the Chicago & Alton and the Missouri Pacific, hereinafter referred to collectively as defendants, composed of the local rates of the switch company and the rates of defendants to destinations, have been since May 10, 1919, and are, unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation on shipments made on and after May 10, 1919, and to establish for the future joint rates not in excess of the rates contemporaneously maintained from Higginsville to the same destinations, and to fix the divisions thereof which the switch company should receive. In substance, complainant alleges that the trunk line rates should have been and should be applied from its mines on the line of the switch company. Rates will be stated in amounts per net ton.

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The switch company operates a railroad from a connection with the Missouri Pacific at Higginsville, 55 miles east of Kansas City, Mo., to a connection with the Chicago & Alton at what is known as Tabo siding, 3 miles west of Higginsville. Higginsville is reached by both trunk lines, but they do not there connect, the former crossing the latter overhead. On the line of the switch company, approximately midway between the two connections, are located two coal mines owned and operated by complainant.

Effective May 10, 1919, the switch company filed with the Public Service Commission of Missouri and with us an initial tariff providing a local rate of 20 cents, minimum \$4 per car, for the transportation of coal, in carloads, from the mines to these connections. On February 12, 1920, this rate was increased to 25 cents, minimum \$5 per car, and on September 19, 1920, to 35 cents, minimum \$7 per car. As a nominal defendant it admits the allegations of the complaint and joins in the prayer for joint rates. The other defendants deny that the switch company is a common carrier and assert that it is a plant facility of complainant.

Some 35 years ago the Rocky Branch Coal Company opened the mines now owned by complainant and laid a track for a distance of slightly over a mile from the mine to connect with the Chicago & Alton at Tabo siding. In 1894 the switch company was incorporated as a common carrier under the laws of Missouri, and as such it makes reports to the Public Service Commission of that state. Its capital stock is \$100,000. No dividends have been paid.

The president of complainant is president of the switch company. All other officers of complainant are also officers or directors of the switch company. The engine crew and the section men are employed by the switch company. In response to a circular request for information the switch company reported to us that it owned 3.67 miles of main line and 0.62 mile of yard track and sidings. It has made no other report to us. It has interchange tracks at Tabo siding with the Chicago & Alton and at Higginsville with the Missouri Pacific. Its equipment consists of two small engines. Witnesses for defendants testified that the rails are badly worn and the ties in poor condition. Some of the trestles and bridges will not now support the weight of a heavy road engine.

The switch company serves only complainant, transports no commodity other than coal, and handles no passengers, mail, or express. It does not pay per diem or issue waybills. It has no team tracks, stations, or other buildings except a roundhouse and a water tank. The service performed by the switch company consists of the movement of empty cars from the interchange tracks to the mines and the reverse movement of the loaded cars; but occasionally,

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in emergencies, it has transferred cars between the Missouri Pacific and the Chicago & Alton. Complainant has made no demand upon defendants to undertake the service performed by the switch company, but the switch company has asked for establishment of joint rates from the mines, and for a division of 15 cents per net ton for the service performed by it.

The coal produced by complainant is of substantially the same grade, competes in the same markets, and is sold at substantially the same prices, as coal produced at mines located in the immediate vicinity of Higginsville from which group rates on coal apply. Complainant states that its principal competition in the sale of coal is from Illinois, the Kansas fields, and near-by points such as Drexel, Waverly, Corder, and Lexington, Mo. Drexel is on the Kansas City Southern, not a defendant herein. Waverly and Corder are, respectively, on the main lines of the Missouri Pacific and the Chicago & Alton. Two of the mines at Lexington are served by the main line of the Missouri Pacific; another by a spur three or four miles in length extending from Myrick, Mo., the coal being hauled from the mines by the Missouri Pacific.

The rate on coal from Higginsville to Odessa, Mo., 15 miles, and to various other more distant points on the Chicago & Alton to and including Kansas City, 55 miles, is 80 cents; to Mexico, Mo., 108 miles, \$1.30. The single-line Missouri distance tariff rates are, for 55 miles, \$1.10; for 108 miles, \$1.50; and the joint-line rates \$1.40 and \$1.70. Defendants contend that if the switch company is held to be a common carrier entitled to participate in joint rates, any order compelling the establishment of rates less in amount than the joint-line Missouri distance tariff rates applicable over the lines of other carriers for transportation in Missouri would create unjust discrimination and undue prejudice against other mines on connecting lines.

Defendants state that they have never treated the switch company as a common carrier, and that its filing of tariffs with the Public Service Commission of Missouri and with us was merely a formality, preliminary to its request upon defendants for a division of joint rates. Complainant cites *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 57 I. C. C., 274, in which we held that the Springfield Terminal Railway Company was a common carrier of property, subject to the interstate commerce act, which might lawfully receive from its trunk line connections divisions of joint rates, or absorptions of switching charges under appropriate tariffs, but counsel for defendants argues, and it appears, that the facts of that case are distinguishable from the facts in this case.

We find that the switch company is not a common carrier subject to the interstate commerce act. We further find that the factors of intrastate rates assailed from the junctions with the switch company to points in Missouri during federal control were not unreasonable, and that the factors of the interstate rates assailed from the junctions with the switch company to the points in Kansas were not and are not unreasonable, unjustly discriminatory, or unduly prejudicial.

The prayer for the establishment of joint rates is denied, and the complaint will be dismissed.

An appropriate order will be entered.

No. 11315.¹

LOWRY LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, NEW YORK, NEW
HAVEN & HARTFORD RAILROAD COMPANY, ET AL.

Submitted April 16, 1920. Decided March 1, 1921.

Charges on four carloads of lumber from Wiergate, Tex., to Little Falls, N. Y., reconsigned to Auburn, Me., and Hartford and Thomaston, Conn., based upon the rates to and from Little Falls, plus demurrage and reconsignment charges, found not unreasonable. Complaint dismissed.

G. H. Lowry for complainant.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Complainant, a corporation engaged in the lumber business at Kansas City, Mo., alleges that the charges collected by defendants on four carloads of lumber shipped in February, 1919, from Wiergate, Tex., to Little Falls, N. Y., and there reconsigned to Auburn, Me., and Hartford and Thomaston, Conn., were unreasonable. It asks for an award of reparation.

¹ This report also embraces No. 11315 (Sub-No. 1), *Same v. Director General, as Agent, New York, New Haven & Hartford Railroad Company, et al.*; No. 11315 (Sub-No. 2), *Same v. Director General, as Agent, New York Central Railroad Company, et al.*; No. 11315 (Sub-No. 3), *Same v. Director General, as Agent, New York, New Haven & Hartford Railroad Company, et al.*

The shipments reached Little Falls over the New York Central between March 14 and March 29, 1919. Notice of arrival of each shipment was mailed by the station agent to complainant on the date of placement for unloading. Subsequently complainant directed reconsignment to the final destinations. Charges were assessed at the combination rates to and from Little Falls, plus the demurrage which accrued while the cars were held at Little Falls awaiting disposition and a reconsignment charge of \$5 on each car.

Complainant contends that the charges should have been based on the joint rate of 45 cents per 100 pounds from origin to final destination, plus a reconsignment charge of \$2 on each car and demurrage at the rate of \$1 per car per day while the cars were held at Little Falls.

At the hearing complainant agreed that the issues here are identical with those in *Lowry Lumber Co. v. Director General*, 59 I. C. C., 709, then pending, and should be controlled by the decision in that case. We there found that charges similar to those here assailed were not unreasonable.

Following that case and upon the record now before us we find that the charges assailed were not unreasonable. An order will be entered dismissing the complaint.

60 I. C. C.

No. 11161.

ILLIFF-BRUFF CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN
ILLINOIS RAILROAD COMPANY, ET AL.

Submitted June 18, 1920. Decided March 1, 1921.

Rate charged during federal control on sulphuric acid, in tank-car loads, from Danville, Ill., to Hoopeston, Ill., found to have been unreasonable. Reparation awarded.

Donald H. Mann and C. B. Cardy for complainant.

K. L. Richmond and John F. Finerty for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. Upon consideration of the record we have reached conclusions other than those suggested by him.

Complainant, a corporation, manufactures acid phosphate of lime at Hoopeston, Ill. By complaint filed January 7, 1920, it alleges that the rate of 9 cents charged by defendants on numerous tank-car loads of sulphuric acid shipped after January 2, 1918, from Danville, Ill., to Hoopeston, was and is unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded and exceeds 3 cents. We are asked to award reparation on all shipments moving between January 2, 1918, and the date of our order herein, and to establish reasonable rates for the future. Rates are stated in cents per 100 pounds.

The movement was entirely within the state of Illinois over the Chicago & Eastern Illinois, hereinafter called defendant, and charges were collected at a rate of 9 cents upon all shipments on which reparation was claimed at the time of the hearing, March 17, 1920.

Danville is 123 miles south of Chicago, to which Hoopeston, 24 miles north of Danville, is intermediate over defendant's line. From the plant of the Hegeler Zinc Company within the switching limits of Danville, where the shipments originated, the distance to Danville is 11.5 miles. For many years Hoopeston has taken the Chi-

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chicago rate on sulphuric acid from Danville under an intermediate rule of the tariff. On October 16, 1917, a commodity rate of 5 cents was in effect. This was increased to 5.3 cents on February 1, 1918, to 7.2 cents on June 1, 1918, under authority granted by the Public Utilities Commission of Illinois, and to 9 cents on June 25, 1918, under general order No. 28 of the Director General of Railroads.

Rates of 6.3 cents prior to June 25, 1918, and 8 cents on and after that date applied from Danville to Peoria, Ill., in connection with defendant's line to Hoopeston and the Lake Erie & Western beyond. It was testified that the Peoria rates since then also applied to intermediate destinations, should have been assessed on complainant's shipments. Examination of the tariffs discloses that the application of the Chicago rates to Hoopeston was not specifically canceled when the Peoria rate was first established, and it follows that the Peoria rates have never been applicable to Hoopeston. *New Albany Box & Basket Co. v. I. C. R. R. Co.*, 16 I. C. C., 315; *Dewey Portland Cement Co. v. A., T. & S. F. Ry. Co.*, 56 I. C. C., 444. Any shipments upon which charges have been collected on the basis of the Peoria rates have been either overcharged or undercharged. It appears that on shipments which moved prior to June 25, 1918, the 9-cent rate may have been charged. If so, such shipments were overcharged.

A low grade of sulphuric acid is used extensively by fertilizer and phosphate manufacturers, and is one of the raw materials used in quantity by complainant. Among the leading Illinois producing points are Danville, La Salle, East St. Louis, Hillsboro, and points in the Chicago switching district, while the leading competition met by complainant in the sale of its manufactured product is at Chicago Heights and Joliet, Ill., and St. Louis, Mo.

Complainant relies mainly on comparisons of the rate assailed with rates on a materially lower basis from these producing points to destinations most of which are in Illinois, including rates of 5.5 cents for hauls from 25 to 55 miles, and 7.5 cents and 8 cents for hauls varying from 58 to 223 miles. Reference is also made to rates on sulphuric acid from Newell, Pa., to points in Pennsylvania and from James Siding, W. Va., to destinations in that state, the general level of which is comparable with the Illinois rates referred to, and to a rate of 9.5 cents from Danville to Milwaukee, Wis., out of which defendant is said to receive for its haul to Chicago a division of 60 per cent or 5.7 cents, and to absorb certain switching charges.

Defendant contends that the rates covered by complainant's exhibits include the lowest which can be found in this territory, that the rates in Illinois are below the general level in central territory, and that these rates on sulphuric acid are in many instances the re-

flection of an earlier policy of the carriers to accord it especially low rates in order to enable it to move to common markets. Complainant answers that an effort of the carriers to establish rates on acid on the basis of 90 per cent of fifth class was disapproved by us in *Illinois Classification*, 55 I. C. C., 290, the rate of 9 cents to Hoopeston being equivalent to 90 per cent of the fifth-class rate. We said in that case that the rates asked would have had the general effect of doubling the Illinois district rates, but we did not find that the existing Illinois rates on acid were not unreasonably low.

Defendant offered exhibits which demonstrate the much higher level of rates on acid existing generally in central territory, and which also show contemporaneous rates in Illinois of 5.5 cents for a movement of 24 miles, 9 cents for 58 miles, 7.5 cents for 62 miles, 8 cents for 82 miles, and 9 cents for distances from 90 to 130 miles. The record clearly establishes that rates on sulphuric acid in Illinois, state and interstate, have no logical relationship to each other.

Defendant concedes the unreasonableness of a rate in excess of 8 cents.

We find that the rates applicable to complainant's shipments were unreasonable to the extent that they exceeded 6.8 cents per 100 pounds prior to June 25, 1918, and 8 cents thereafter during federal control. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice. The collection of undercharges may be waived.

Our jurisdiction over intrastate rates, except under circumstances not here present, is limited to cases falling within the provisions of section 206(c) of the transportation act, 1920. Federal control terminated on February 29, 1920, and no order for the future will be entered. Complainant has not shown that it was damaged by reason of lower rates accorded its competitors, and no finding is necessary respecting the allegation of unjust discrimination and undue prejudice.

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No. 11157.

CENTRAL PENNSYLVANIA LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA
RAILROAD COMPANY, ET AL.

Submitted October 25, 1920. Decided March 5, 1921.

Charges collected on intrastate shipments of old rails, in carloads, from Port Allegany to Masten, Pa., between July 1, 1918, and September 11, 1918, found not unreasonable. Complaint dismissed.

W. E. Rice for complainant.

Edwin A. Lucas, John F. Finerty, and Royal McKenna for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation engaged in the lumber business at Williamsport, Pa. By complaint, seasonably filed, it alleges that the rate of \$4 per long ton charged on 17 carloads of old rails shipped from Port Allegany, Pa., to Masten, Pa., between July 1, 1918, and September 11, 1918, was unjust and unreasonable and asks reparation on the basis of the subsequently established rate of \$3.40 per long ton. Rates stated herein do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The rails were taken from an old tramroad operated by complainant at Port Allegany and shipped to itself at Masten, where those fit for use were relaid in a narrow-gauge road and the remainder were scrapped. The legally applicable sixth-class rate was charged. Complainant requested the establishment of a lower commodity rate on July 29, 1918. Its request was acted upon in due course and the rate of \$3.40 per long ton became effective on November 22, 1918. These were emergency shipments, however, and complainant deemed it inexpedient to delay them pending the establishment of a lower rate.

The shipments moved over the Pennsylvania Railroad to Marsh Hill Junction, Pa., and thence over the Susquehanna & New York
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Railroad, 152 miles. Complainant compares the rate of \$4, yielding 26.3 mills per long ton per mile, with a contemporaneous rate of \$3.60 per long ton to Ricketts, Pa., 265 miles by way of the Pennsylvania to Wilkes-Barre, Pa., and the Lehigh Valley Railroad beyond, yielding 13.6 mills per long ton per mile. We are unable to verify the \$3.60 rate. The tariffs on file with us show a rate of \$3.10 to Ricketts, via Wadsworth Junction, N. Y.

No previous shipments of old rails had moved from Port Allegany to Masten. Defendants, therefore, contend that no breach of duty can be inferred from their failure to have a commodity rate in effect; that the rate was reduced in due course upon request; that the sixth-class rate applies on rails as well as other low-grade commodities throughout this territory; and that neither the subsequent voluntary reduction of the rate nor the single rate comparison offered by complainant tend to prove that the rate charged was unreasonable.

We find that the rate charged was not unreasonable. An order will be entered dismissing the complaint.

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No. 11904.
L. A. MERON
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 4, 1920. Decided March 3, 1921.

Rate on sand, in carloads, from Boonville, N. Y., to McKeever, N. Y., during federal control, found to have been unreasonable. Reparation awarded.

Ernie Adamson for complainant.

Royal McKenna for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Complainant is engaged in the general contracting business at Albany, N. Y. By complaint filed October 12, 1920, he alleges that the rate of 14 cents per 100 pounds charged for the transportation of four carloads of sand shipped in July, 1918, from Boonville, N. Y., to McKeever, N. Y., was unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is sought. Rates will be stated in amounts per net ton.

The shipments, aggregating 440,000 pounds, moved over the New York Central, 35 miles. Charges in the sum of \$616 were collected at the applicable sixth-class rate of \$2.80. Contemporaneously there was in effect over the route of movement a combination rate of \$1.30, composed of rates of 70 cents from Boonville to Forestport, N. Y., and 60 cents beyond. Defendant admits that the rate charged was unreasonable to the extent that it exceeded \$1.30, and expresses willingness to make reparation to that basis.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.30 per net ton; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation in the sum of \$330, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 10862.

INTERNATIONAL AGRICULTURAL CORPORATION ET AL
v.
DIRECTOR GENERAL, AS AGENT, SEABOARD AIR LINE
RAILWAY COMPANY, ET AL.

Submitted October 15, 1920. Decided March 5, 1921.

Rates charged for the transportation of fuel oil, in tank cars, from Tampa and Port Tampa, Fla., to points in the Bone Valley district of Florida found not to have been or to be unreasonable. Complaint dismissed.

Charles E. Cotterill for complainants.

Nelson W. Proctor for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, Commissioner:

Complainants excepted to the report proposed by the examiner, and, after service of that report, requested a further hearing, which we denied.

Complainants mine phosphate rock in the Bone Valley, or land pebble phosphate rock district, of Florida. Fuel oil, used in drying and roasting the rock, is obtained in Mexico and in Texas and other states west of the Mississippi River, and is transported by vessel to Tampa and Port Tampa, Fla., the terminals, respectively, of the Seaboard Air Line Railway and the Atlantic Coast Line Railroad. It then moves to the Bone Valley in tank cars by rail. In the complaint, filed September 2, 1919, it is alleged that the rates charged for the transportation of the oil from Tampa and Port Tampa to points in the Bone Valley district were and are unreasonable, in violation of the act to regulate commerce and the federal control act. Complainants seek reparation and the establishment of a reasonable rate for the future.

The complaint was brought before this Commission on the basis that the rail transportation within the state of Florida is a part of interstate or foreign commerce; and defendants concede our jurisdiction over the rates assailed. See *Tampa Fuel Co. v. A. C. L. R. R. Co.*, 43 I. C. C., 281; and *Tex. & N. O. R. R. Co. v. Sabine Tram Co.*, 227 U. S., 111.

The Bone Valley district lies to the south of the main line of the Atlantic Coast Line Railroad extending from Port Tampa through

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Plant City, Winston, and Lakeland to Jacksonville, Fla. The Winston & Bone Valley branch of the Atlantic Coast Line running south from Winston serves most of the mines in the district. The Seaboard Air Line also reaches important producing points over its branch lines extending southeasterly from Plant City. Among the more important points where mining operations are conducted are Prairie, Mulberry, and Nichols, which lie almost in the center of the district, Coronet, Brewster, Agricola, Bartow, Tiger Bay, and Fort Meade. Coronet, the nearest point, is 26 miles from Tampa and 35 miles from Port Tampa, and Fort Meade, the farthest point, is 56 miles from Tampa and 65 miles from Port Tampa. Most of the oil moves from Port Tampa by way of the Atlantic Coast Line, and the average distance from that port to all mines in the Bone Valley district is 52.5 miles. Port Tampa is 9 miles southwest of Tampa; and we will refer to those places as the ports.

On June 24, 1918, and for nearly 16 years prior thereto, a rate of 64.5 cents per net ton was applicable on fuel oil from Tampa and Port Tampa to all points in the Bone Valley district. On June 25, 1918, it became 80 cents per ton in accordance with the provisions of general order No. 28 of the Director General, an increase of 25 per cent over the previous rate. The 80-cent rate was canceled by the Seaboard Air Line on August 20, 1918, and by the Atlantic Coast Line on September 19, 1918, and a rate of \$1.545 was established, based on an increase of 4.5 cents per 100 pounds over the rate in effect May 25, 1918. The present rate of \$1.50 per ton was made effective by the Seaboard Air Line January 19, 1919, and by the Atlantic Coast Line March 15, 1919. The complaint grows out of the substitution of the increase of 4.5 cents per 100 pounds, equivalent to 90 cents per ton, for 25 per cent as originally ordered.

Phosphate rock was first discovered in the Bone Valley district in Florida about 1886, some five or six years after what is now the Atlantic Coast Line was built into Port Tampa. During the early years of the industry, wood, procured from forests in the immediate vicinity of the operations, was used for fuel. At that time the rates on fuel oil were the graded class-L rates of the Florida Railroad Commission. The rate to Mulberry, for example, 48 miles from Port Tampa, was \$1.20 per ton, and to Tiger Bay, 62 miles from Port Tampa, \$1.40 per ton. As the operations developed and the near-by supply of wood became exhausted applications were made to the officials of the Plant system, then serving the district, for lower rates on oil. Accordingly, on May 22, 1902, a blanket rate of 60 cents per net ton was established. The fact that the rate then in effect on coal was approximately 60 cents per net ton, excluding a handling charge at the port, may have been influential in the establishment of the 60-cent rate on fuel oil.

The Plant system was acquired by the Atlantic Coast Line in July, 1902, and in the following September the rate on fuel oil from Port Tampa to points in the phosphate rock district was increased 4.5 cents to 64.5 cents, to cover the mileage allowance paid for the use of the tank cars, which had not been considered in making the rate in the first instance. This rate was in effect when the Seaboard Air Line extended its lines into the phosphate rock territory, and was adopted by that carrier to maintain all the producing points on a parity.

No further change took place until June 25, 1918, when general order No. 28 became effective. Shortly thereafter representations were made to the Railroad Administration by independent oil operators in the midcontinent and other producing fields that the percentage increase authorized in general order No. 28 was detrimental to their interests, in that it operated to the disadvantage of shipments moving over long distances. The Standard Oil Company and its affiliated companies operate and control a network of pipe lines extending from the wells to many of the most important distributing centers, and their average rail haul is said to be from one-half to one-third that of their competitors, the independent operators. The percentage increase in rates resulted, therefore, in increasing the charges borne by the latter to a much greater extent than was the case with those who were in position to employ pipe lines for the transportation of the oil to distributing points, and, further, destroyed long standing relationships. In view of these circumstances the Railroad Administration concluded to authorize a flat increase, in lieu of 25 per cent, to be applied to the rates in effect May 25, 1918, regardless of their measure or of the distances over which they were applicable. Investigation showed that an increase of 4.5 cents per 100 pounds in all rates on oil would yield approximately the same revenue as under the percentage increase, and the substitution was therefore made. The rate from the ports thus became \$1.545 per ton, but the fraction was subsequently dropped and a rate of \$1.50 made effective.

The use of fuel oil in the phosphate rock district began with the establishment of the commodity rate in 1902. In that year the movement of land pebble phosphate rock through the ports was 345,220 long tons. The production of rock and with it the consumption of oil increased rapidly thereafter until the outbreak of the European war. Shipments of rock through Tampa and Port Tampa amounted in 1912 to 963,440 tons and in 1913 to 1,128,478 tons. The fuel-oil consumption in 1913 is estimated to have been 211,828 tons, or 85 per cent of the receipts at the ports. The war interrupted export shipments, and because of the difficulty in obtaining sulphuric acid, an essential ingredient of the manufacture

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of fertilizer from phosphate rock, the output of rock declined rapidly after 1913. In 1918 only 173,347 tons moved through the ports. The consumption of oil during that year is estimated to have been 113,053 tons, equivalent to 3,768 carloads of 60,000 pounds. This represents an average of more than 12 cars daily, assuming uniform consumption during 300 working days. From May, 1919, until the time of the hearing the operations of the mines were curtailed by a strike of the employees, and shipments of rock and oil almost ceased. Complainants anticipate that the production will return to normal and will equal or exceed that of 1913. Plans have been made for extensions of the properties, and if anticipations are realized from 23 to 30 carloads of oil will be required daily.

Complainants contend that, giving due consideration to the character of the country through which the defendants operate in serving the phosphate rock district, the lack of expensive terminal service either at the ports or at the mines, the volume of movement, and what they consider the unusually favorable transportation conditions, a rate in excess of 80 cents per ton is unreasonable and imposes an undue burden on the oil traffic. They show by the testimony of a former official of the Atlantic Coast Line that the country traversed is relatively level and that the costs of construction and maintenance are at least as favorable as are to be found elsewhere in the southeast. They also show that the loading at the ports and the deliveries at destinations are attended with a minimum of terminal service. It appears that the loading tracks at Port Tampa, where most of the oil is loaded, are adjacent to the classification yard and main line and that one short switching movement is sufficient to spot 10 or 11 cars. At destination the cars are placed on complainants' sidings, where they are moved as required by complainants' power.

Particular emphasis is laid on the service performed in moving the loaded and empty tank cars. Under normal conditions, when the industries are operating at or near capacity, there is a regular daily movement of loaded rock cars to the ports and empty cars to the mines. The empty tank cars move to Port Tampa in special trains with loaded rock cars, and the loaded tanks move out in similar trains with empty rock cars. There is therefore a revenue movement in both directions. When so handled a train made up at Port Tampa moves through to Mulberry, a distance of 48 miles, leaving the main line at Winston, 37 miles from Port Tampa. From Mulberry the cars are moved as consigned to the various destination points, of which there are about 16. The service westbound is performed in a similar manner in through special trains. The decline in production, however, caused the Atlantic Coast Line to suspend this method of handling the traffic, and for some time prior to the hearing the cars

were moved in regular trains between Port Tampa and Winston or Lakeland and by branch-line trains south of the junctions.

Complainants undertook to show the cost of the service performed in the transportation of a ton of oil from the ports to the average mining point. Their witness estimated roughly that it would cost about 3 cents per net ton of rock to haul a mixed train of oil cars and rock cars between the ports and the mines and 2.5 cents per ton for terminal service. These figures were based on the movement of 1,500 tons of rock, or 30 loaded cars, from Mulberry to Port Tampa. The cost for the round trip of a train of 33 cars, containing 1,500 tons of rock destined to Port Tampa and 300 tons of oil in the reverse direction, was estimated to be \$116, including a mileage allowance on the tank cars but excluding terminal costs. The witness was uninformed, however, of the actual cost of the coal and other supplies consumed or of the wages paid the train and engine crews. The figures are not stated in detail and are unsupported, in the main, by items susceptible of check.

The evidence adduced by complainants and defendants regarding the cost of construction and maintenance of the lines between the ports and the phosphate mines was in irreconcilable conflict. Complainants' witness estimated the cost of constructing that part of the main line of the Atlantic Coast Line leading to the ports to be \$15,000 per mile and of its branch lines to the mines at \$7,500 per mile, while defendants submitted a statement purporting to show the cost of reproducing such lines to be approximately \$92,434 and \$34,070 per mile, respectively. Complainants' witness estimated the annual cost of maintaining such lines to be not over \$500 per mile, while defendants stated that such cost would exceed \$2,000 per mile.

Counsel for complainants on brief undertook to supply the deficiencies in the evidence relating to costs and to make corrections where corrections were obviously necessary. The figures submitted at the hearing and thereafter in the brief purport to show the cost incident to the movement in solid trains between Port Tampa and one point in the district, but, as has been explained, the service from the time of the increase in the rate to the date of the hearing was in regular merchandise trains serving main and branch line points. Even assuming that the service is now and will hereafter be in special through trains, the evidence of record regarding the cost of such service affords no substantial aid in determining the reasonableness of the rates assailed, or what would be reasonable rates for the future.

The rate of 64.5 cents per ton on fuel oil in effect prior to June 25, 1918, yielded earnings of \$19.35 per car of 60,000 pounds, 36.9 cents per car-mile for the average distance of 52.5 miles, and 1.23 cents per ton-mile. The 80-cent rate made effective June 25, 1918,

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yielded \$24 per car, 45.7 cents per car-mile, and 1.52 cents per ton-mile. The present rate yields \$45 per car, 85.7 cents per car-mile, and 2.86 cents per ton-mile. The rate on rock in the reverse direction was 50 cents per long ton, equivalent to 44.6 cents per net ton, prior to June 25, 1918, and is now 60 cents per long ton, or 53.6 cents per net ton. The earnings on a carload of rock weighing 50.5 net tons were, under the former rate, \$22.52 per car, or 42.9 cents per car-mile, and are now \$27.07 per car and 51.6 cents per car-mile. Coal is used to some extent in the phosphate rock district and the rate thereon from Tampa and Port Tampa was 65 cents per long ton prior to June 25, 1918. Effective on that date it became \$1, equivalent to 89 cents per net ton. Complainants argue that by comparison with the rates on rock and coal a rate of \$1.50 on oil is excessive. It appears that the rate on rock has been increased 20 per cent, on coal 54 per cent, and on oil 132 per cent.

Defendants contend that the former rate on oil, on which the present rate was predicated, was established upon a relatively low basis solely to aid a languishing industry and without regard to other rates on the same commodity or the revenue to be derived. That the rate was lower than the general level of oil rates is fully substantiated by the record. We have not been referred to any rates on oil for an average distance of 50 miles as low as 3.23 cents per 100 pounds, the equivalent of the 64.5-cent rate per ton from the ports. The rate in Oklahoma, for example, was 5.5 cents, in Texas 6.5 cents, and in Louisiana 7 cents, under the distance scales applicable in those states. According to defendants, the lowest rate on oil shown in tariffs of carriers operating in central freight association territory was 4.5 cents, which applied for distances not over 16 miles, while the rates for 50 miles ranged from 7.5 cents to 9.5 cents. These latter rates, however, were applicable on all grades of oil, including the higher valued refined products of petroleum. Other comparisons of record deal with distance rates applicable in southern and eastern states, and with rates between specific points for the same and shorter distances in all sections of the country. A rate of 8.5 cents per 100 pounds, or \$1.70 per ton, was authorized by the Director General in October, 1919, for the movement of crude oil from certain wells in Kentucky to a recently constructed refinery at Lexington, Ky., for distances of from 40 to 75 miles. All the comparisons point to the fact that the rate from the ports to the phosphate rock territory was not, and is not now, upon as high a basis as these defendants and other carriers maintained or maintain on the same commodity elsewhere. This is recognized by complainants' counsel, who stated at the hearing that if the rates applying on oil generally are to be

considered the standard of reasonableness, the complaint should not have been brought.

It is strongly urged, however, that the differences in the transportation conditions, the volume of traffic, and other considerations distinguish the character of service here rendered from that to which the comparisons apply. It is argued that the transportation between the ports and the phosphate rock district is unique and analogous to that considered in *Solvay Process Co. v. D., L. & W. R. R. Co.*, 55 I. C. C., 280. There are essential differences, however. In that case we had before us the rate on limestone from the quarry of the Solvay Process Company at Jamesville, N. Y., to Solvay, a distance of 9 miles. The movement was in train loads of from 20 to 23 50-ton and 75-ton cars, twice a day, from one point to one point, with no terminal service at either end, and the cars were furnished by the shipper without any mileage allowance. The essential differences in the general natures of the services there and here are obvious.

Upon all the facts of record we are unable to find that the rates on fuel oil from Tampa and Port Tampa to points in the Bone Valley district have been or are unreasonable, and will enter an order dismissing the complaint.

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No. 10882.

RYAN FRUIT COMPANY ET AL.

v.

SOUTHERN PACIFIC COMPANY, DIRECTOR GENERAL,
ET AL.

Submitted April 30, 1920. Decided March 5, 1921.

Through rates on deciduous and citrus fruits, in carloads, from certain points in California to Salt Lake City and Ogden, Utah, found to have been and to be unreasonable. Reasonable relationship of rates prescribed for the future and reparation awarded.

E. C. Foubert for complainants.

Guy V. Shoup, Geo. H. Smith, Elmer Westlake, F. B. Austin, H. W. Klein, J. V. Lyle, and C. B. Deal for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND ATTCHISON.

ATTCHISON, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

Complainants are wholesale produce dealers, five of whom are located in Salt Lake City, Utah, and the sixth in Ogden, Utah. They allege that the rates charged on numerous carload shipments of deciduous and citrus fruits, from points of origin in California designated in Pacific freight bureau tariff No. 58-B, I. C. C. No. 167, as group 1, to Salt Lake City and Ogden, since June 21, 1916, were and are unreasonable and unjustly discriminatory in violation of sections 1 and 2 of the interstate commerce act, and section 10 of the federal control act, and of the aggregate of the intermediates provision of section 4 of the interstate commerce act. Prior to June 25, 1918, the rate was \$1 per 100 pounds; and it was then increased under general order No. 28 of the Director General of Railroads to \$1.25 per 100 pounds. Some shipments originated at points in California outside of group 1, and on such shipments the local rate from the point of origin was added to the rate from group-1 points. These local rates, as factors in the through charges and the percentage increase in the rates made effective June 25, 1918, are not in issue. Complainants seek reparation, and ask for the establishment of a reasonable rate for the future. Rates hereinafter referred to will be stated in amounts per 100 pounds.

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No evidence was introduced in support of the allegation of unjust discrimination. The evidence as to the alleged unreasonableness under section 1 of the act consists of rate comparisons unsupported by any showing of similarity of transportation conditions. The demand for reparation is based on the allegation that the through commodity rates were and are in excess of the aggregate of the intermediate rates to and from Ola and Tecoma, Nev., and were and are to that extent unreasonable. Ola is on the line of the Western Pacific Railroad near the Nevada-Utah line 800 miles from San Francisco and 127 miles from Salt Lake City. Tecoma is on the Southern Pacific Railway near the Utah-Nevada border and is 670 miles from San Francisco and 113 miles from Ogden. Some of the shipments herein involved moved in connection with the Western Pacific via Ola, and the remainder moved through Tecoma in connection with the Southern Pacific and Oregon Short Line. The rate situation prevailing on citrus fruits after June 25, 1918, and prior to August 26, 1920, when increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, became effective, will be taken as illustrative. From group-1 points in California, which group includes Stockton, Roseville, Marysville, etc., a commodity rate of \$1.25 was in effect on citrus fruit to Utah common points. There was contemporaneously applicable from the same points of origin to Ola a class-C rate of 64 cents, and from Ola to Utah common points, including Salt Lake City and Ogden, a class-C rate of 35 cents. The sum of the class-C rates to and from Ola is 99 cents, which combination the complainants allege is the proper basis to have applied on their shipments which moved through Ola. The carriers admit that on shipments of fruits from California points to Nevada points, and from Nevada points to Utah points, class-C rates are and were legally applicable, being authorized in agent F. W. Gomph's exception sheet No. 1-F, I. C. C., 305. They deny, however, that class-C rates are applicable on through traffic from California points to Utah points, and claim the use of that basis was prohibited by the language of item 250 (note 3) of the exception sheet, as follows: "Will not apply on fresh fruit between points in Utah on the one hand, and on the other, points in California."

There was a through class-C rate of 70 cents between group-1 points in California and Utah points, and the defendants urge that by using the class-C rates to and from Ola a new class-C rate is arrived at, which, if used, nullifies the tariff provision that class-C rates will not apply on fruit from California to Utah. Because of this tariff prohibition they assert that in the absence of a through rate on through shipments the class-C basis of rates from and to the intermediate points could not be applied, and that therefore the

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through commodity rate is not in contravention of the fourth section. Even if it be admitted that in the absence of a published through rate the carriers could not have applied to through shipments from California points to Utah points the aggregate of intermediate rates here contended for by the complainants, it is nevertheless true that under the published tariffs a shipment of fruit may be made from group-1 points to Ola on the class-C rate of 64 cents, and the same car of fruit may be shipped from Ola to Salt Lake City on the class-C rate of 35 cents. Under these circumstances it is clear that the through commodity rate of \$1.25 is actually in excess of the aggregate of the intermediate rates contemporaneously applicable to and from Ola, amounting to 99 cents. This is likewise true as to the shipments that moved via Tecoma, over which route the aggregate of the intermediate rates was 98 cents, made up of 64 cents to Tecoma and 34 cents beyond. We have frequently announced the principle that in the absence of a justifying explanation a through rate in excess of the aggregate of the intermediate rates applicable to the same traffic over the same route is prima facie unreasonable. *Winona Carriage Co. v. P. R. R. Co.*, 18 I. C. C., 334, 335.

The through rates and combination rates here involved are shown in the following table:

	Prior to June 25, 1918.	After June 25, 1918.
Through commodity rate, group-1 to Utah common points.....	\$1.00	\$1.25
Class-C rate, group-1 points to Utah common points.....	.56	.70
Class-C rate, group-1 points to Ola, Nev.....	.51	.64
Class-C rate, Ola, Nev., to Utah common points.....	.28	.35
Combination rate.....	.79	.99
Class-C rate, group-1 points to Tecoma, Nev.....	.51	.64
Class-C rate, Tecoma, Nev., to Utah common points.....	.27	.34
Combination rate.....	.78	.98

The class-C basis on fruits from California to Nevada has been in effect since June, 1908. In *Rates on Fruits and Vegetables*, 30 I. C. C., 56, the carriers were required to maintain that basis or to publish commodity rates not higher than class-C rates. Our order did not, however, affect rates on fruit between California and Utah points, or between Nevada and Utah points. In *Commercial Club, Salt Lake City, v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218, we found that the rate "should not exceed \$1 per 100 pounds, for the future," and the commodity rate remained fixed at that sum until June 25, 1918, when it was increased to \$1.25. Other than the fact that they were and are in excess of the aggregate of the intermediate rates herein referred to there is nothing of record to warrant a finding

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that the through charges were and are unreasonable; nor does the record show a justification for through rates which exceed the aggregates of the intermediate charges.

Upon the record we find that the through rates complained of were, are, and for the future will be unreasonable to the extent that they exceeded or may exceed the aggregate of the intermediate rates contemporaneously applicable via the respective routes of movement; that complainants made the shipments as above described and paid and bore the charges thereon, and that they were damaged thereby and are entitled to reparation in the difference between the charges paid and those that would have accrued at the rates herein found reasonable, with interest. As to two of the shipments, the cause of action accrued more than two years prior to June 27, 1918, upon which date the informal complaint was filed with us. Under the provisions of section 206(f) of the transportation act, 1920, the period of federal control is not computed as a part of the periods of limitation in claims for reparation. Excluding that period from the computation, the claim as to these shipments is not barred. *Thomas Iron Co. v. Director General*, 57 I. C. C., 657; *Western States Portland Cement Co. v. Director General*, 59 I. C. C., 195; *Chevrolet Motor Co. v. Director General*, 59 I. C. C., 685. The exact amount of reparation due cannot be determined on the present record, and complainants should proceed in accordance with rule V of the Rules of Practice, whereupon we will consider an order as to reparation.

An appropriate order will be entered.

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No. 11342.

ODELL-DALY MATERIAL COMPANY

*v.*DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC
RAILROAD COMPANY, ET AL.

Submitted November 4, 1920. Decided March 1, 1921.

Rate applicable on silica sand, in carloads, from Guion, Ark., to Sapulpa, Okla.,
found unreasonable. Reparation awarded.

E. N. Adams for complainant.*James M. Chaney* and *M. G. Roberts* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached a conclusion different from that recommended by him.

Complainant, a corporation engaged in the sand business, alleges that the rate charged by defendants on three carloads of silica sand shipped March 1, 3, and 8, 1919, from Guion, Ark., to Sapulpa, Okla., was unreasonable to the extent that it exceeded 11 cents. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments aggregated 235,300 pounds and moved over the Missouri Pacific to Aurora, Mo., and the St. Louis-San Francisco beyond, 344 miles. Charges were collected in the sum of \$317.66, at a rate of 13.5 cents, the basis for which is not disclosed. A joint class-E rate of 31.5 cents governed by the western classification was applicable and the shipments were, therefore, undercharged \$423.54.

Prior to August, 1918, complainant made application to the originating carrier to establish commodity rates on silica sand from Guion to Sapulpa and other window-glass manufacturing points in Oklahoma. On November 16, 1918, the originating carrier advised it that a commodity rate of 11 cents would be established. The latter rate did not become effective until March 10, 1919, after the shipments moved.

A rate of 11 cents was contemporaneously applicable to Sapulpa from Gray's Summit, and Pacific, Mo., 411 and 407 miles, respectively. Based on 78,433 pounds, the average weight of complainant's shipments, a rate of 11 cents would yield \$86.28 per car and about 25.1 cents per car-mile.

We find that the rate applicable was unreasonable to the extent that it exceeded 11 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$58.83, with interest. Collection of the outstanding undercharge may be waived.

An appropriate order will be entered.

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No. 11405.
LOWRY LUMBER COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted August 20, 1920. Decided March 1, 1921.

Demurrage charges collected for the detention at Maybrook, N. Y., of a carload of lumber shipped from Standard, La., to Maybrook, thence reconsigned to Newburyport, Mass., found not unreasonable or otherwise unlawful. Complaint dismissed.

C. Adney for complainant.

C. C. P. Rausch for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the lumber business at Kansas City, Mo., formerly bore the corporate name of Beekman Lumber Company. By complaint seasonably filed, as amended, it seeks reparation for alleged unreasonable demurrage charges collected by defendants for the detention at Maybrook, N. Y., of a carload of lumber shipped from Standard, La., to Maybrook, thence reconsigned to Newburyport, Mass.

The car, I. M. 12856, left Standard August 1, 1917, consigned to the Beekman Lumber Company, hereinafter called complainant, at Maybrook. On August 15 complainant wrote the agent at Maybrook of the Erie, the delivering carrier, advising him of the shipment and of complainant's purpose to divert it to some New England point and requesting him to wire complainant upon its arrival at Maybrook. The car arrived there September 3, and on the following day the agent at Maybrook telegraphed to complainant notice of arrival and requested disposition orders. No response to the telegram was made by complainant.

On August 25, 1917, complainant had requested the Kansas City agent of the Erie to change the billing of the shipment and divert it to Newburyport, showing the name of complainant's customer as consignee. On August 27 complainant again wrote this agent to

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change the billing so as to consign to shipper's order at Newburyport, notify customer, adding:

Please get your exchange B/L to us as quickly as possible, as we will no more than have time to get it through to destination ahead of the car, and of course on shipper's order, delivery cannot be made in advance of arrival of B/L at destination.

In these two letters the car was erroneously referred to as I. M. 12956.

The car was finally released September 29 on orders from the superintendent of car service of the New Haven, one of the participating carriers in the movement beyond Maybrook. Demurrage charges of \$85 were collected for the detention at Maybrook. Neither the correctness nor the reasonableness of this amount is in issue, the sole question being whether any demurrage lawfully accrued.

The record fails to show what steps, based on the instructions to the Erie's Kansas City agent, were taken between August 27 and September 28 to effect the reconsignment, other than that on September 17 the Erie's Chicago office issued an order-notify bill of lading. The witness for complainant was unable to disclose these facts or to state which, if any, of the defendants was negligent, merely asserting that the Erie should have had the instructions of August 27 in sufficient time to comply therewith prior to the accrual of demurrage. However this may be, the primary cause of the accrual of the demurrage was the failure of complainant to give disposition orders to the agent at Maybrook in answer to his telegraphic request of September 4. Demurrage may properly be assessed for a detention which the shipper can avoid or abate. *Reconsignment Case*, 47 I. C. C., 590, 634.

We find that the demurrage charges collected were not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

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No. 11022.
GREATER BELLEVILLE BOARD OF TRADE ET AL.
v.
EAST ST. LOUIS & SUBURBAN RAILWAY COMPANY
ET AL.

Submitted November 2, 1920. Decided March 1, 1921.

Defendants' fares for the transportation of passengers from Belleville and East St. Louis, Ill., to St. Louis, Mo., found not unreasonable, unduly prejudicial, or otherwise unlawful. Complaint dismissed.

R. W. Ropiequet, P. K. Johnson, L. J. Grossman, M. V. Joyce, E. C. Kramer, and H. L. Browning for complainants.

M. W. Schaefer and James W. Carmalt for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

The cities of Belleville and East St. Louis, Ill., and their respective commercial organizations allege that the fares, both one way and commutation, published and collected by defendants since November 1, 1919, for the transportation of passengers from these cities to St. Louis, Mo., were and are unjust, unreasonable, and unduly prejudicial, in that defendants have not only increased materially the interstate fares previously in effect, but have changed the basis thereof by establishing various fare groups or zones. We are asked to establish just, reasonable, and nondiscriminatory fares and practices. The fares dealt with in this report are those in effect at the time of hearing. They have since been increased.

Defendants, the East St. Louis & Suburban Railway Company, which operates a system of electric interurban lines including the one to Belleville here under consideration; the East St. Louis Railway Company, an electric railway operating within the city of East St. Louis, and the St. Louis & East St. Louis Electric Railway Company, which operates the line over the Eads bridge between St. Louis and East St. Louis, will be referred to as the Suburban, the City line, and the Bridge line, respectively. These carriers join in the publi-

cation of the fares in issue, are separately organized, have a common ownership and control, have the same officers, and may for the purposes of this report be regarded as one.

The Suburban is a common carrier railroad in Illinois and operates electric lines between East St. Louis and Edwardsville, Collinsville, Lebanon, and Belleville, Ill. It owns 68.7 miles of track and transports passengers, mail, and express matter over the entire system, and coal over a portion thereof. The line between Belleville and East St. Louis, known as the Belleville division, is approximately 13.5 miles long. The Suburban owns the tracks over which it operates from Belleville westwardly to Twentieth street in East St. Louis, but from that point to the east end of Eads bridge, a distance of about 1.5 miles, it operates under agreement over the tracks of the City line. The City line, in turn, having no tracks of its own east of Twentieth street, operates under agreement over the tracks of the Suburban from Twentieth to Thirty-seventh street, which is said to be the end of the thickly populated section of East St. Louis in that direction.

About 20 years ago, when the Belleville division was constructed, the fare from Belleville to the east end of the bridge in East St. Louis was 20 cents, divided 5 cents to the then western boundary of Belleville, 5 cents to Edgemont, a point about halfway between Belleville and East St. Louis, 5 cents to Twentieth street in East St. Louis, and 5 cents thence to the bridge end. Subsequently the city of Belleville extended its limits westward to Edgemont, and East St. Louis extended its limits eastward to and including Edgemont, meeting the new western boundary of Belleville. Each city then sought to replace, by a single 5-cent fare zone, the two zones formerly included within its limits as extended. These attempts were resisted by defendants before the Illinois state commission and in the federal courts, resulting in the establishment in 1918 of two 5-cent zones in Belleville and one 6-cent zone in East St. Louis, making the total fare 16 cents from the first zone in Belleville to the east end of the bridge in East St. Louis.

During these years, as well as under the present tariffs, interstate fares from Belleville and other points on the lines of defendants have been constructed on the basis of the intrastate fares to East St. Louis plus 5 cents for the transportation to St. Louis over the Bridge line, which line receives all of the latter amount.

It is testified for defendants that because of the greatly increased cost of labor and materials after the year 1914 the Suburban early in 1919 applied to the state commission for permission to increase its fares over the Belleville division by establishing an additional 5-cent zone in Belleville and creating a 6-cent zone between Edge-

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mont and Forty-second street in East St. Louis; thus making three 5-cent zones, dividing at Voellinger and Ogle in Belleville and two 6-cent zones dividing at Forty-second street in East St. Louis. Failing to secure the approval of the state commission for the proposed changes this carrier again resorted to court proceedings and under date of September 12, 1919, secured from the federal court a decree permitting it to charge fares which should not exceed 3 cents per mile and restraining the state authorities from enforcing the provisions of the so-called Illinois 2-cent maximum passenger fare law. Pursuant to the findings of the court the Suburban on September 21, 1919, established for application to intrastate business the basis of one-way fares above outlined and in addition certain lower commutation fares and, not being operated under federal control, applied to us under the then provisions of the fifteenth section of the act for permission to establish the same basis of interstate fares. Upon protest the interested parties were accorded an informal hearing, following which we granted the carriers' application and the assailed fares became effective on November 1, 1919.

The following exhibit, introduced by defendants, shows the interstate fares established on that date and the intrastate fares established September 21, 1919, together with the distances and earnings thereunder:

St. Louis-Belleville Line, East St. Louis & Suburban Railway Company.

Distances.	Route.	One-way fare.		54-ride monthly commutation books.		
		Per ride.	Per mile	Per book.	Per ride.	Per mile.
<i>Miles.</i>	<i>Between St. Louis, Mo., and—</i>					
7.75	Edgemont.....	\$0.17	\$0.0219	\$7.40	\$0.137	\$0.0175
10.08	Ogle.....	.22	.0219	\$10.10	.188	.0187
12.51	Voellinger.....	.27	.0216	\$10.75	.20	.016
14.87	Belleville with transfer.....	.32	.0215	12.80	.237	.016
	Belleville without transfer.....	.30	.0202			
	<i>Between East St. Louis and—</i>					
6.40	Edgemont.....	.12	.0165	5.40	.10	.0154
8.8	Ogle.....	.17	.0193	8.10	.15	.017
11.25	Voellinger.....	.22	.0195	8.75	.162	.0144
13.61	Belleville with transfer.....	.27	.0198	10.80	.20	.0147
	Belleville without transfer.....	.25	.0184			

¹ Not including transfer mileage.

² Combination, \$3 for 52 rides between St. Louis and East Louis plus intrastate commutation fare between East St. Louis and these points.

The following table, compiled from defendants' exhibits, contains comparisons of the above one-way fares between East St. Louis and points on the Belleville division with those contemporaneously in 60 I. C. C.

effect for similar distances on lines of other carriers, both steam and electric, operating out of East St. Louis:

Comparison of one-way fares of the East St. Louis & Suburban Railway Company with those of the East St. Louis, Columbia & Waterloo Railway, Louisville & Nashville Railroad, Illinois Central Railroad, and Southern Railroad.

Distances.	Between East St. Louis, Ill., and—	E. St. L. & S. Ry. Co.		E. St. L. C. & W. Ry.		L. & N. E. R.		I. C. R. R.		Southern.	
		Fare.	Per mile.	Fare.	Per mile.	Fare.	Per mile.	Fare.	Per mile.	Fare.	Per mile.
<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
2.6	Coapman.....									10	4
5.2	Lake.....									17	3
5.09	Cahokia.....			15	3						
6.4	Church.....							20	3.1		
6.49	Edgemont.....	12	1.85								
6.7	French Village.....					21	3.1				
6.75	Frairie Du Pont.....			21	3						
8.8	Ogle.....	17	1.93								
9.7	do.....										
9.02	Birkner.....					28	3	30	3		
9.06	Dupo.....			27	3						
9.7	Ocozet.....			33	3					30	3
11.22	Phelps.....			39	3						
11.25	Voslingier.....	22	1.95								
13	Niamer.....										
12.6	West Belleville.....							41	3		
12.61	Belleville (without transfer).....	25	1.84								
14	Belleville.....					42	3				
14.1	do.....									42	3
14.5	do.....							44	3		

To and from St. Louis the fares of the Suburban are 5 cents higher than those shown above, those of the East St. Louis, Columbia & Waterloo are 10 cents higher, and those of the three steam carriers 25 cents higher. Complainants call attention to the fact that the St. Louis fares of the steam railroads include the free transportation of baggage and entitle the passenger to transportation to the Union Station in St. Louis, whereas the fares of the Suburban do not include the handling of baggage, and passengers traveling to St. Louis over that line and desiring to connect with outbound trains are obliged to pay the local street-car fare of 8 cents from the St. Louis end of the bridge to the Union Station.

Complainants state that the fares assailed materially exceed the one-way and commutation fares previously in effect, and that the time within which commutation fares may be used has been reduced from 60 days to a calendar month. They contend that the present fares are unreasonably high, distances considered, in comparison with fares in effect over defendants' City line, and that the disruption of long-existing fare groups retards the development of these communities, and imposes an undue burden upon their inhabitants.

Complainants further contend that the service performed by defendants between Belleville and East St. Louis is city street railway transportation and may properly be compared with railway

transportation of this kind over other lines of defendants, and elsewhere. Defendants say that under the laws of Illinois a railroad corporation can not operate a street railway, and that the Suburban was organized and constructed to do an interurban business between Belleville and East St. Louis. They contend that the action of these two municipalities in expanding their area did not change the character of this line to a street railway. Belleville's population is about 25,000. While no separate record has been kept of the number of passengers traveling between Belleville and St. Louis, it is stated that about 60 per cent of the travel over that line is to or from St. Louis and 40 per cent to or from East St. Louis. The new first-fare zone east of the bridge over the Belleville division embraces the built-up portion of East St. Louis and extends considerably beyond the limits of that city as they existed at the time the Suburban was constructed and until the municipal expansion above mentioned. The remainder of the territory traversed is more or less thinly populated and embraces farm lands and lowlands not used for residential purposes. The fares for this part of defendants' lines are not fairly comparable with those in East St. Louis, the population of which is over 90,000, or with the fares for corresponding distances in St. Louis, Chicago, and other large cities.

Defendants' witnesses testified that electric interurban lines generally throughout that section were charging 3 cents per mile, having obtained injunctions from the federal courts wherever the provisions of state statutes were contravened. They show that the fares on the Belleville division have been maintained on a lower basis than those applying over their other interurban lines. The former, as increased on the dates previously mentioned, average slightly over 2 cents per mile from Belleville to St. Louis, and a fraction under 2 cents to East St. Louis, whereas the latter were increased at the same time to 3 cents per mile. The travel over the other divisions is not as heavy as over the Belleville division, but they say that due consideration has been given to this factor. In addition to evidence showing increases of from 50 to 150 per cent in the cost of various items of labor and materials, defendants introduced statements of their operating accounts covering several periods, including the 11 months ended November 30, 1919, showing a net return of less than 1 per cent on the sum of \$3,548,991.50 submitted by them as the estimated minimum cost of the entire property devoted to passenger business. This figure is admittedly but an estimate hurriedly prepared. Dividends were paid during the years 1914 to 1918, ranging from 6 to 8 per cent per annum on an aggregate capital stock of a par value of \$3,850,000.

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In respect of the reduction of the time limit on commutation tickets, it was testified for defendants that the practice of the great majority of railroads, both steam and electric, is to limit their use to the calendar month in which issued, and that in substituting this basis for the 60-day period previously in effect on the Belleville division they are merely standardizing their practice and bringing it into conformity with that which has been in effect for some time on their other divisions. The evidence does not show that the present practice in this respect is unreasonable.

In *Increased Rates, 1920*, 58 I. C. C., 220, at page 253, we said:

Petitions have been filed in this proceeding by a national organization of electric lines, seeking permission to increase their rates in the same proportion as the rates of trunk lines are advanced. The operating costs of these lines have, on the whole, increased in approximately the same ratio as those of steam railroads. In some instances there is competition between the electric lines and the steam railroads. We conclude that the freight rates of electric lines may be increased by the same percentages as are approved herein for trunk lines in the same territory. This is not to be construed as an expression of disapproval of increases, made or proposed in the regular manner, in the passenger fares of electric lines.

Effective September 8, 1920, by tariffs filed with us upon statutory notice, and not protested, the Suburban increased the interstate fares between numerous points on all of its divisions, including the Belleville division, to the basis of approximately 3 cents per mile, in line with similar increases in intrastate fares which became effective August 8, 1920, each tariff indicating on its face that the latter fares were published under authority of the court decree of September 12, 1919, referred to above. The increased interstate fares now in force under these tariffs are not in issue in this proceeding, and no opinion is here expressed with respect thereto.

We find that the fares and practices assailed were not unreasonable, unjustly discriminatory, or unduly prejudicial, and the complaint will be dismissed.

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No. 11620.

SWIFT & COMPANY ET AL.

v.

CANADIAN NATIONAL RAILWAYS, DIRECTOR GENERAL,
AS AGENT, ET AL.

Submitted December 6, 1920. Decided March 5, 1921.

Rates between points in western Canada and St. Paul, Minn., and points south and east thereof, not found unreasonable. Complaint dismissed.

R. D. Rynder for complainants.

Royal T. McKenna for Director General.

F. G. Dorety and *R. J. Hagman* for all defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

AITCHISON, *Commissioner*:

No exceptions were filed to the report proposed by the examiner.

Complainants allege that the rates charged by defendants for the transportation of fresh meat, packing-house products, and other miscellaneous commodities between Winnipeg, Manitoba, and Edmonton, Alberta, on the one hand, and numerous points south and east of St. Paul, Minn., including Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., on the other, between June 25, 1918, and February 1, 1919, were unjust and unreasonable, in violation of section 1 of the interstate commerce act and section 10 of the federal control act. The prayer is only for reparation.

Winnipeg is located 464 miles northwest of St. Paul, and 420 miles west of Fort William, Ontario, the Canadian head of the lakes. Edmonton is 1,318 miles west of St. Paul and 1,268 miles west of Fort William. Through rates between points in western Canada, including Winnipeg and Edmonton, and points in the territory south and east of St. Paul are made by combination on St. Paul. Similarly, through rates in effect over Canadian routes, between the same points, are made by combination of the rates to and from Fort William, or Port Arthur, Ontario, 4 miles east of Fort William. In this proceeding only the components of the through rates applying west of St. Paul are assailed.

For many years the carriers operating through St. Paul into western Canada maintained their rates on a parity with those in effect

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on the Canadian lines west of Fort William. With the exception of the international rates to and from points west of Manitoba, which in 1914 were made slightly higher than the local Canadian rates, this situation continued until 1917, when both the domestic and Canadian carriers sought permission to increase their rates approximately 15 per cent. The applications of the western carriers subject to our jurisdiction were denied; but on March 15, 1918, the Canadian rates were increased 15 per cent except in the extreme western part of Canada. The relationship with the rates from St. Paul was thus changed. Thereupon the carriers participating in the traffic between St. Paul and points in western Canada filed fifteenth section applications seeking authority to make corresponding increases in the international rates. The applications were granted and rates, increased by 15 per cent, became effective April 15, 1918. On June 25, 1918, general order No. 28 of the Director General, and supplement thereto, increased the class rates 25 per cent. The order provided that the rates to be increased were those existing May 25, 1918, which was subsequent to the 15 per cent increase, and the relationship with the Canadian rates was again disturbed.

About August 1, 1918, the Governor General of Canada authorized an increase of 25 per cent in the rates of the Canadian lines, except that in the territory west of Fort William and Port Arthur the order provided that the increase should be calculated on the tariffs in force prior to March 15, 1918. Otherwise stated, the so-called 25 per cent increase in western Canada was calculated on the rates as they existed prior to the 15 per cent increase, while the 25 per cent increase in the international rates was calculated on the rates after they had been increased 15 per cent. As a result the international rates sustained an increase of more than 40 per cent over those in effect April 14, 1918, while during the same period the Canadian rates were increased only 25 per cent. This condition continued until February 1, 1919, when the international rates were reduced to the same basis as the Canadian rates, thus restoring the original relationship.

Complainants contend that the charges assessed on their shipments were unreasonable after June 25, 1918, until revised on February 1, 1919. They take the position that the so-called 25 per cent increase under general order No. 28 should have been based, as was that of the Governor General of Canada, on the rates in effect immediately prior to the 15 per cent increases. They compare the international rates with rates maintained during the same period from St. Paul, Duluth, Kansas City, Fort Worth, and other points to points in Utah, Wyoming, Montana, Idaho, and elsewhere for approximately the same distances. Many of these comparisons are of

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little value in determining the propriety of the rates under consideration owing to differences in the transportation conditions; others are illustrative of the general level of the class rates between St. Paul and points in the northwest.

An examination of the record and the tariffs discloses that the rates between St. Paul, and Winnipeg and Edmonton, made effective June 25, 1918, based on rates that had been previously increased 15 per cent, were relatively lower than the rates contemporaneously in effect between St. Paul and points in North Dakota and Montana for substantially equal distances. This supports defendants' contention that the rates were originally established and are maintained to-day more to enable the carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines than with reference to their general reasonableness. As a rule, rates between eastern points and Fort William, Port Arthur, and St. Paul are the same, and this necessitates, for competitive reasons, an approximate equalization west thereof.

We find that the rates assailed were not unreasonable and an order dismissing the complaint will be entered.

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No. 10590.¹

OKLAHOMA PETROLEUM & GASOLINE COMPANY
v.
DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &
SANTA FE RAILWAY COMPANY, ET AL.

Submitted September 27, 1919. Decided March 1, 1921.

Rates on caustic soda, in carloads, from St. Louis, Mo., and points east thereof to Tulsa, Sand Springs, Cushing, and Bristow, Okla., found unreasonable. Maximum reasonable rates prescribed and reparation awarded. Issue of undue prejudice reserved for further hearing.

Clifford Thorne, Walter R. Scott, and E. N. Adams for complainants.

C. S. Burg for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

These cases involve similar issues, were heard together, and will be disposed of in one report. By complaints seasonably filed, complainants, corporations engaged in refining petroleum at various points in Oklahoma, allege that defendants' rates on caustic soda, in carloads, from St. Louis, Mo., Chicago, Ill., and points east thereof to Tulsa, Sand Springs, Cushing, and Bristow, Okla., were and are unreasonable, and unduly prejudicial as compared with the rates from the same points of origin to Kansas City and Joplin, Mo., Fort Smith, Ark., and Coffeyville and Neodesha, Kans. We are asked to prescribe reasonable rates for the future and to award reparation on certain shipments which moved between May 26, 1917, and February 19, 1919. Rates will be stated in cents per 100 pounds.

The following statement shows the points of origin and destination and the rates in effect since May 1, 1917:

¹ This report also embraces No. 10647, *Coden & Company et al. v. Director General, as Agent, Akron, Canton & Youngstown Railway Company, et al.*

To—	From—	May 1, 1917, to June 24, 1918, in- clusive.	June 25, 1918, to Oct. 2, 1918, in- clusive.	Oct. 3, 1918, to July 26, 1919, in- clusive.	July 27, 1919, to Aug. 26, 1920, in- clusive.	Aug. 27, 1920, to Nov. 24, 1920, in- clusive.	Nov. 25, 1920, and since.
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Tulsa, Okla.....	St. Louis, Mo.....	47.5	59.5	44	44	59.5	59.5
	Chicago, Ill.....	52.5	65.5	50	50	67.5	67.5
	Detroit, Mich.....	60	75	59.5	63.1	84	85.9
	Wyandotte, Mich.....	60	75	59.5	63.1	84	85.9
	Cleveland, Ohio.....	61.4	77	61.5	68.6	85	86.7
	Kimberly, Wis.....	52.5	65.5	55.5	65.5	88.5	88.5
	S. Charleston, W. Va.....	61.4	79	68.5	63.5	87	87
	Saltillo, Va.....	57.7	72	72	72	95	105
	St. Louis, Mo.....	47.5	59.5	44	44	59.5	59.5
	Chicago, Ill.....	52.5	65.5	50	50	67.5	67.5
Sand Springs, Okla.....	Detroit, Mich.....	60	75	59.5	63.1	84	85.9
	Fairport Harbor, Ohio.....	62.3	78	62.5	64.4	85	85
	Delray, Mich.....	60	75	59.5	63.1	84	85.9
	St. Louis, Mo.....	47.5	59.5	44	44	59.5	59.5
	Chicago, Ill.....	52.5	65.5	50	50	67.5	67.5
Cushing, Okla.....	Wyandotte, Mich.....	60	75	59.5	63.1	84	85.9
	St. Louis, Mo.....	47.5	59.5	50.5	59.5	80.5	80.5
	Chicago, Ill.....	52.5	65.5	65.5	65.5	88.5	88.5
Bristow, Okla.....	St. Louis, Mo.....	47.5	59.5	50.5	59.5	80.5	80.5
	Chicago, Ill.....	52.5	65.5	65.5	65.5	88.5	88.5

¹ Rate was 63 cents, Oct. 13, 1917, to June 24, 1918.

The rates from the points of origin east of St. Louis to these destinations are made either by combination on St. Louis or by addition of differentials to the rates from St. Louis. The through rates are attacked, but complainants object principally to the components applicable west of St. Louis. Change in these components would result in corresponding changes in the through rates. St. Louis will be taken as representative of the points of origin and Tulsa of the points of destination.

Caustic soda is used to neutralize acids which remain in petroleum after certain processes of refining. Prior to 1916 the commodity rate on caustic soda, in carloads, from St. Louis to groups 2 to 10, which cover the greater part of Oklahoma, including all the destinations here considered, was 47.5 cents. In *Oklahoma Traffic Assn. v. A., T. & S. F. Ry. Co.*, 38 I. C. C., 392, decided March 4, 1916, we prescribed a rate of 35 cents on caustic soda from St. Louis to Oklahoma City and rates from Chicago and certain other points east of St. Louis which should not exceed the locals or differentials to St. Louis, plus the rate found reasonable from St. Louis. The carriers accordingly published rates to Oklahoma City of 35 cents from St. Louis and 40 cents from Chicago, but did not make these rates applicable from other points taking the St. Louis and Chicago rates. The rates to Oklahoma City were later made applicable to Chickasha, Okla., a farther distant point, and to points intermediate between Oklahoma City and Chickasha via certain lines. On June 25, 1918, the group rates to Oklahoma and likewise the special commodity rates from St. Louis to Oklahoma City were increased by 25 per cent under general order No. 28 of the Director General of Railroads. This resulted in rates of 59.5 cents from St. Louis to the destinations here considered

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and other points taking the group rates, and a rate of 44 cents to Oklahoma City. On October 3, 1918, this rate was made applicable to points intermediate between St. Louis and Oklahoma City and points at less distance, including Tulsa, Sand Springs, and Cushing, but not Bristow. Defendants stated at the hearing that they had taken steps to establish the 44-cent rate to Bristow. It does not appear from the tariffs on file with us that this has been done. Cushing and Tulsa are intermediate between St. Louis and Oklahoma City, and prior to October 3, 1918, the rates to those points constituted unauthorized departures from the long-and-short-haul provision of the fourth section. The readjustment of rates on this traffic has resulted in the application of the 44-cent rate from St. Louis to substantially all points in the northeastern portion of Oklahoma.

The following table compares the rates on this traffic prior to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, and the short-line distances from St. Louis to various refining points, including Tulsa:

St. Louis to—	Short-line distances.	Rates.	Earnings per ton-mile.
	Miles.	Cents.	Miles.
Tulsa, Okla.....	424	44	20.75
Kansas City, Mo.....	278	15	10.79
Joplin, Mo.....	232	22.5	12.56
Iola, Kans.....	367	27.5	15
Coffeyville, Kans.....	418	22.5	15.56
Chanute, Kans.....	413	27.5	12.22
Neodesha, Kans.....	401	32.5	16.21
Cherryvale, Kans.....	387	32.5	16.96
Independence, Kans.....	416	32.5	15.63

Complainants contend that the rates assailed were and are unreasonable and unduly prejudicial to the extent that they exceeded and exceed by more than 7 cents the rates to Joplin; and unreasonable, distances considered, as compared with the rates to Oklahoma City. They also contend that the rate from Kimberly should not exceed the rate from Chicago.

The short-line distance from St. Louis to Oklahoma City is 544 miles, 120 miles greater than the distance from St. Louis to Tulsa. Complainants contend that this difference in distance justifies a lower rate to Tulsa than to Oklahoma City, and cites *Hooker-Hendrie Hardware Co. v. M., K. & T. Ry. Co.*, 34 I. C. C., 3, wherein we prescribed, among others, rates on prepared roofing from St. Louis to Muskogee and Tulsa of 37 cents and 38 cents, which were 10 and 9 cents, respectively, lower than the rate to Oklahoma City.

Complainants compare the 44-cent rate on caustic soda to Tulsa with the rates on various other commodities from St. Louis to Tulsa,

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some of which they say are sodium derivatives, as follows 27.5 cents on crude phosphate rock, acid phosphate, and fuller's earth; 29 cents on cement; 31.5 cents on lime; 37.5 cents on sulphuric acid; 21.5 cents on soda ash and soda cake; and 36.5 cents on sesquicarbonate of soda and monohydrate of soda. They also compare the rate of 59.5 cents, minimum 50,000 pounds, on caustic soda from Detroit and Wyandotte to Tulsa with the rate of 37 cents, minimum 37,500 pounds, on salt from and to the same points, and the rates on caustic soda from St. Louis to Tulsa with the rates from St. Louis to Des Moines and other points in Iowa, Omaha, Nebr., and St. Paul and Duluth, Minn., ranging from 15 to 32.5 cents for distances of from 340 to 750 miles.

Kimberly is 189 miles north of Chicago. It takes Chicago rates on caustic soda to Joplin, Coffeyville, and Independence, and on classes and commodities to Oklahoma points. Complainants lay stress on the fact that in complying with our order in *Oklahoma Traffic Asso. v. A., T. & S. F. Ry. Co., supra*, the carriers did not extend to Kimberly and other points in the Chicago rate territory the rate prescribed from Chicago, and that in the subsequent extension of the Oklahoma City rates to Tulsa no wider application as to points of origin was provided. Complainants insist that while it is true that the complaint and order in that case did not cover points in Chicago rate territory generally there is no reason why the usual adjustment of rates should be departed from and Kimberly given a higher rate than Chicago. The through rate of 65.5 cents from Kimberly to Tulsa in effect at the time of the hearing exceeded the aggregate of intermediate rates based on Chicago. This departure from the fourth section is unauthorized and unlawful. Defendants stated at the hearing that steps had been taken to reduce the rate from Kimberly so as not to exceed the combination on Chicago. It does not appear from the tariffs on file with us that this has been done.

Defendants say that in the past rates on classes and commodities to Tulsa and other northeastern Oklahoma points generally have been blanketed over a large part of the state so that Oklahoma City and Tulsa have taken the same rates, and that while this grouping has been departed from in a great many instances the rates to Tulsa and Oklahoma City on a number of commodities are still the same. It is urged that this traffic does not originate at St. Louis, but moves over long distances, and that it is not unusual to blanket rates under such conditions. Attention is called to *Midcontinent Oil Rates*, 36 I. C. C., 109, in which we fixed blanket rates on petroleum, applicable from all refining points in the midcontinent oil fields in Kansas and Oklahoma to numerous destinations. In connection with this contention it may be noted that the rates on caustic soda from the

points of origin here considered to Kansas points are substantially lower than to Tulsa.

Defendants contend that the rates from St. Louis to Joplin are on a lower plane than they would be but for the rates established within the state by the Public Service Commission of Missouri. Over indirect workable routes Joplin is intermediate between St. Louis and Neosho, Mo., and as a result the rates to Joplin are made no higher than to Neosho. Defendants urge that the rates on caustic soda from St. Louis to Missouri River points and Joplin are unduly low and should not be adopted as a standard for the rates to Tulsa. They explain that prior to July, 1902, the rate on caustic soda from St. Louis to Missouri River points was on the fifth-class basis, or 22 cents. In that year, at the request of packers located on the Missouri River, the Chicago Great Western, which does not serve Joplin or Tulsa, established a rate of 8.5 cents from Mississippi River points to the Missouri River. This made necessary a similar reduction by competing carriers. The rates from the Mississippi River to the Missouri River are based on the short-line distance of 200 miles between Hannibal and St. Joseph, Mo. Commodity rates from St. Louis to Joplin are usually made the same differentials over the rates to Kansas City that obtain in the respective classes to which they belong. Caustic soda is rated fifth class. The fifth-class rate from Mississippi River to Joplin being 7.5 cents over the fifth-class rate from St. Louis to Kansas City and the September, 1920, rate on caustic soda to Kansas City having been 5 cents resulted in a rate of 22.5 cents from St. Louis to Joplin prior to the increase under *Increased Rates, 1920, supra*.

They also contend that as caustic soda is not manufactured at St. Louis that point is not representative of the points of origin, and that more representative points would be Kimberly, Wyandotte, and Cleveland. They show that the rates to Tulsa in effect at the time of the hearing yielded ton-mile earnings of 14.3 mills from Kimberly, 13.1 mills from Wyandotte, and 12.8 mills from Cleveland. The rates to Joplin yielded 7.2 mills from Kimberly, 9.3 mills from Wyandotte, and 8.3 mills from Cleveland. Defendants contend that the earnings to Joplin are low in comparison with the average earnings of the Atchison, Topeka & Santa Fe system of 8.94 mills in 1916 and 8.5 mills in 1917. They also point out that the rates from St. Louis apply from other Mississippi River points for greater distances, as, for example, from Dubuque, Iowa, a Mississippi River crossing, which is 570 miles from Tulsa.

Numerous comparisons are made by defendants showing that the rate on caustic soda from St. Louis to Tulsa is less than on other fifth-class commodities, and is a less percentage of the correspond-

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ing fifth-class rate from St. Louis to Tulsa than the rates on caustic soda from St. Louis to other destinations are of the corresponding fifth-class rates. They refer to rates from St. Louis to Tulsa of 54 cents on manufactured iron and fencing; 62.5 cents on structural iron and iron chain; 49 cents on canned goods; 60 cents on beer and mineral water; 56.5 cents on soap; 42.5 cents on iron pipe; and 65 cents on paint in oil. The rate on caustic soda from St. Louis to Tulsa is 67.7 per cent of the corresponding fifth-class rate and that asked by complainant would be only 45.4 per cent. The rates from St. Louis to Tulsa on canned goods, coffee, packing-house products, pipe, sirup, and iron and nails average 81 per cent of the corresponding fifth-class rates. Defendants further compare the rate on caustic soda from St. Louis to Tulsa with rates on this traffic from St. Louis to other destinations, as follows: 59.5 cents to Arkansas City, Kans.; 53 cents to Augusta, Kans.; 56.5 cents to Hutchinson and Wichita, Kans.; and 64 cents to Fort Worth and Wichita Falls, Tex.

With respect to the rates from Kimberly to these destinations defendants insist that in the making of special commodity rates, as in this case, it is not unreasonable to make a rate from Chicago less than from a point in the extreme northern part of the Chicago territory, and that especially is this true where the movement is from an interior point, as is the case with caustic soda.

Defendants show that there has been no carload movement of caustic soda to Joplin and that this traffic moves into that point largely from Kansas City in less-than-carload lots on the fourth-class rate.

We find that the rates assailed from St. Louis to Tulsa, Sand Springs, Cushing, and Bristow, Okla., were unreasonable to the extent that they exceeded the rates on the same commodity contemporaneously in effect from St. Louis to Oklahoma City; that the through rates from Chicago, Ill., Detroit, and Wyandotte, Mich., Cleveland, Ohio, South Charleston, W. Va., and Saltville, Va., to Tulsa; from Chicago to Bristow; from Chicago, Delray and Detroit, Mich., and Fairport Harbor, Ohio, to Sand Springs; and from Chicago and Wyandotte to Cushing, were unreasonable to the extent that they exceeded rates made by the use of locals or differentials, as the case may be, to St. Louis, plus the rates beyond herein found reasonable; and that the present rates from St. Louis and Chicago to Bristow are, and for the future will be, unreasonable to the same extent. We are not convinced that the rates from Kimberly to these destinations should be the same as from Chicago. We find that they were unreasonable to the extent that they exceeded the local rate to Chicago, plus the rates beyond herein found reasonable.

We further find that complainants, Oklahoma Petroleum & Gasoline Company, Cosden & Company, Phoenix Refining Company, and Consumers Refining Company, made shipments of caustic soda from the points of origin to the destinations involved and paid and bore the charges thereon; that they have been damaged to the extent of the difference between the charges paid and the charges that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

Upon this record we are unable to determine whether undue prejudice exists. The case will be set for further hearing on that issue.

An appropriate order will be entered.

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No. 11422.
PROCTER & GAMBLE COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted November 26, 1920. Decided March 1, 1921.

Rates applicable on peanut oil, in tank-car loads and in less than carloads, from Suffolk, Va., to Macon, Ga., found not unreasonable or unduly prejudicial. Complaint dismissed.

H. Ignatius for complainant.

Alex. M. Bull for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Upon consideration of the record we have reached conclusions differing from those recommended by him.

Complainant, a corporation manufacturing soap and soap powders and refining vegetable oils, with plants at various points, including one at Macon, Ga., alleges that the rate charged by defendant on six shipments of peanut oil from Suffolk, Va., to Macon, Ga., during July, August, and September, 1919, was unreasonable and unduly prejudicial. It asks reparation only. Rates are stated in cents per 100 pounds and do not include the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

One shipment consisted of 24 barrels of peanut oil, weighing 11,366 pounds, on which the applicable less-than-carload class rate of 95 cents was charged. The other five were tank-car loads of a total weight of 303,320 pounds, upon which charges were collected at the applicable sixth-class rate of 54 cents. All moved over the Southern, 683 miles. The short line between Suffolk and Macon is over the Atlantic Coast Line and the Georgia, 561 miles. Effective November 22, 1919, a commodity rate of 32.5 cents was published by the Southern from Suffolk to Macon on peanut oil, in carloads, in barrels, or in tank cars, which was the rate in effect between those points north-bound at the time the shipments moved; and to this basis reparation is sought. The rate of 32.5 cents was also made effective over the Atlantic Coast Line and the Georgia on January 21, 1920.

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Complainant submitted comparisons of rates on peanut and other vegetable oils between various points and of car-mile earnings thereunder. These comparisons show that the rate of 54 cents was above and the rate of 32.5 cents somewhat below the general level of rates on vegetable oils in this territory. Between the southern points shown on complainant's exhibit the average rate on vegetable oils other than peanut, is 36.4 cents, the average distance 636 miles, and the average car-mile revenue 34.7 cents.

The allegation of undue prejudice was practically withdrawn by complainant at the hearing, the statement being made that "the charge of prejudice is rather remote and unimportant." No evidence was introduced to show that the rate applicable on the less-than-carload shipment was unreasonable.

Defendants show that there has been no other movement of peanut oil from Suffolk to Macon, and that complainant did not request the establishment of a commodity rate until September 18, 1919, when four of the shipments had moved. The other carload shipment was delivered by October 3, 1919. Defendants contend that these isolated shipments are just such as are intended to be carried on class rates. Complainant admits error on its part in not sooner requesting a commodity rate. It does not appear that there was any undue delay on defendants' part in establishing the commodity rate after it had knowledge that a movement was contemplated.

We find that the rates applicable were not unreasonable or unduly prejudicial.

The complaint will be dismissed.

EASTMAN, Commissioner, dissenting:

In his proposed report the examiner reached the conclusion that the rate charged was unreasonable to the extent that it exceeded 36 cents, a rate based on the prevailing level of vegetable oil rates in the south and higher than the rate of 32.5 cents subsequently established. The latter rate was applicable northbound between the same points at the time of movement. No exceptions were filed. It seems to me that there is insufficient reason for reaching a different conclusion.

60 I. C. C.

No. 11518.
CENTURY GLASS SAND COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 13, 1920. Decided March 3, 1921.

Rate in effect during federal control on silica sand, in carloads, from Imperial, W. Va., to Pennsboro, W. Va., found unreasonable. Reparation awarded.

James T. Crutchfield for complainant.

John F. Finerty, Cyrus B. Stafford, and Royal McKenna for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation operating a quarry at Imperial, W. Va., alleges that the rate of \$1.80 per net ton charged on 42 carloads of silica sand shipped from Imperial to Pennsboro, W. Va., between July 25 and November 10, 1919, both inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded \$1.40 per net ton. Reparation is asked. Except as otherwise noted, the points hereinafter mentioned are located in the state of West Virginia. Rates will be stated in amounts per net ton.

Imperial is on the Pickens branch of the Baltimore & Ohio 60 miles south of Grafton, where the branch leaves the main line. From Clarksburg, 22 miles west of Grafton, another branch extends in a southerly direction and at Macpelah Junction, 24 miles south of Clarksburg, is connected with the Pickens branch by a line to Buckhannon, 45 miles south of Grafton. The distance from Imperial to Pennsboro is 93 miles via Macpelah Junction and Clarksburg, and 121 miles via Grafton. Owing to heavy grades and light bridge structures on the route via Macpelah Junction, traffic originating on the Pickens branch generally moves through Grafton; and this is the route over which most, if not all, of the shipments in question moved.

Charges were collected at the applicable commodity rate of \$1.80, specifically published to Cornwallis, 10 miles beyond Pennsboro, and 60 I. C. C.

made applicable to the latter point by an intermediate clause in the tariff. There were contemporaneously in effect to Pennsboro commodity rates of \$1.40 from Dunbar, Pa., 138 miles, and \$1.90 prior to September 20, 1919, and \$1.70 thereafter from Berkeley Springs, 225 miles. In April, 1919, complainant asked for the establishment of a rate of \$1.10 from Imperial to Pennsboro, and on December 10, 1919, a rate of \$1.40 was established.

We find that the rate assailed was unreasonable to the extent that it exceeded \$1.40 per net ton; that complainant made the shipments as described, and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

60 I. C. C.

No. 11548.
BENJAMIN T. CRUMP COMPANY
v.
DIRECTOR GENERAL, AS AGENT.

Submitted December 3, 1920. Decided March 3, 1921.

Rate on a carload of automobile guard rails from Milwaukee, Wis., to Richmond, Va., found unreasonable. Reparation awarded.

C. L. Knowles and P. T. Bergheimer for complainant.

John C. Brooke for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND FORD.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation doing business in Richmond, Va., alleges by complaint filed June 14, 1920, that the rate charged by defendant on a carload of automobile guard rails shipped April 30, 1918, from Milwaukee, Wis., to Richmond, was unreasonable and unduly discriminatory. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipment consisted of 245 bundles of automobile guard rails, weighing 29,400 pounds, on which charges of \$223.44 were collected at the applicable less-than-carload second-class rate of 76 cents, governed by the official classification. With the shipment were included two crates of hardware weighing 200 pounds on which charges of \$1.14 were assessed at the third-class rate of 57 cents. The latter charges are not assailed. The car was loaded by the consignor and unloaded by the consignee and the shipment was made under one bill of lading.

No carload rating was provided for automobile guard rails in the official classification although it carried carload ratings on most automobile parts. A fourth-class rate of 39 cents applied provided on carload shipments of automobile engine or gear parts of aluminum, brass, bronze, or copper; axles, with attachments; instrument boards of foreign wood other than Canadian wood or Mexican pine; and shock absorbers. Effective December 30, 1919, a fourth-class rating on bumper guards or bumper rails, which include automobile guard

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rails, in bundles, in carloads, minimum 30,000 pounds, was established in official territory.

Defendant contends that in the absence of evidence that there was any movement of automobile guard rails in carload quantities from Milwaukee to Richmond, or any request for a carload rating prior to the date of this shipment, the fact that a lower carload rating was subsequently established does not prove that the rate charged was unreasonable.

We find that the rate assailed was unreasonable to the extent that it exceeded the fourth-class rate of 39 cents per 100 pounds subject to a minimum of 30,000 pounds; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$106.44, with interest.

An appropriate order will be entered.

60 I. C. C.

No. 10987.

CONSOLIDATION COAL COMPANY

v.

CHESAPEAKE & OHIO RAILWAY COMPANY, DIRECTOR
GENERAL, AS AGENT, ET AL.

Submitted October 18, 1920. Decided March 5, 1921.

1. Millers Creek Railroad held to be a common carrier, subject to the interstate commerce act.
2. Rates on coal, in carloads, from points on the Millers Creek Railroad, resulting from the cancellation by the Chesapeake & Ohio Railway of the absorption of the switching charge of the Millers Creek Railroad found unreasonable and unduly prejudicial to the extent they exceeded or may exceed the rates contemporaneously applicable from group-5 district of the Chesapeake & Ohio Railway Company.

J. Walter Lord and Lord & Whip for complainant.

W. S. Bronson for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

MEYER, Commissioner:

This proceeding was made the subject of a proposed report. Exceptions were filed by complainant and oral argument was had.

Complainant, a Maryland corporation, engaged in mining and marketing bituminous coal, by complaint filed October 22, 1919, alleges that prior to October 6, 1919, the rates exacted by defendants for the transportation of bituminous coal from mines in Johnson county, Ky., on the Millers Creek Railroad to certain points in central freight association territory, western classification territory, and in Canada, were unjust, unreasonable, and unduly prejudicial to the extent that they exceeded by \$2.50 per car the rates contemporaneously applicable from the Big Sandy group-5 district. Reparation on shipments moving within the statutory period prior to October 6, 1919, and the maintenance of rates no higher than the group-5 district rates are asked.

While this is not an industrial railway case, the status and rights of the Millers Creek Railroad are pertinent to the issues raised by the complaint and should therefore be considered.

The Millers Creek is a standard-gauge single-track road, having 4.33 miles of main line and 0.8 mile of side track. It connects with
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the Chesapeake & Ohio Railway Company, hereinafter termed the defendant, at Van Lear Junction, Ky. In May, 1909, it was incorporated as a common carrier under the laws of Kentucky as the result of an agreement between complainant and defendant by which the former was to construct and operate the road, and the latter to establish its main-line rates on coal from the mines located thereon and to absorb a switching charge of \$2.50 per car. The total cost of its road and equipment was \$184,764.24. Complainant owned the entire capital stock of the Millers Creek until January 1, 1918, as of which date it was purchased by the Baltimore & Ohio as the result of negotiations begun in 1912. The purchase price was \$298,000 and is evidenced by a note due December 31, 1920, interest on which has been paid.

Other lines owned by the Baltimore & Ohio in the vicinity of the Millers Creek were under federal control, and rather than maintain a separate organization the Baltimore & Ohio requested complainant to continue to operate the Millers Creek. As a consequence complainant's local manager operated the road and its local auditor handled the accounts, billing the Baltimore & Ohio for deficits since January 1, 1918. All other employees of the Millers Creek are separate from those of complainant. The operating deficit for the year 1918 has been paid by the Baltimore & Ohio.

The Millers Creek is laid with 80-pound rails and is so constructed that trunk line power can operate, and at times has operated, over it with safety. It owns and operates two 70-ton locomotives, one box car, three flat cars, and three gondola cars, one baggage coach, and one combination coach for passengers, baggage, and mail. Coal and other freight destined beyond its lines is carried in foreign-line equipment. A station and an agent are maintained at Van Lear Junction by defendant, one-half the expense being borne by the Millers Creek. It holds itself out to transport passengers and freight for the general public and also carries mail. Coal mined by complainant is the principal commodity transported by the Millers Creek and constituted nearly 99 per cent of its tonnage in 1917 and 1918. During those years the receipts from all other freight traffic were approximately 25 per cent and from passenger traffic slightly over 18 per cent of the total receipts. It serves no mines other than complainant's. Its passenger train makes four round trips a day and meets all passenger trains of defendant at Van Lear Junction. The passengers are mostly employees of complainant, but none are carried for or at the expense of complainant. It serves a population of approximately 2,500, about 400 of whom are farmers. Farm products and merchandise of the country storekeepers are carried. Its operating deficit to January 1, 1918, was \$90,000.

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The Millers Creek performs no services other than those specified in its published tariffs, which do not provide for the collection of demurrage. Demurrage is collected by defendant for the detention of cars on the Millers Creek. It pays no per diem. Under car-distribution rules the mines of complainant are treated as though located on the line of defendant. It files tariffs and annual and other reports with the Commission. It also files tariffs with the Kentucky Railroad Commission, has exercised the right of eminent domain, and is taxed as a common carrier.

Prior to October 6, 1919, no joint through rates were maintained from points on the Millers Creek. From February 3, 1910, to February 1, 1912, its switching charge of \$2.50 per car on coal was absorbed by defendant. On February 1, 1912, defendant discontinued that absorption; but effective October 6, 1919, by tariff filed under authority of the Director General, at the request of complainant and over the protest of defendant, the junction point or district rates were made applicable from mines on the Millers Creek. By thus extending the district rates the practice in effect for approximately two years prior to February 1, 1912, was reestablished. This practice has not been extended to commodities other than coal and as to such commodities the charge of the Millers Creek is added to the district rates.

Bills of lading are not issued by the Millers Creek. Cars are billed by the mine clerks and the billing is placed with the cars, which are moved by the Millers Creek to Van Lear Junction, where they are placed on interchange tracks of defendant, or on the siding of the Millers Creek. The joint agent at Van Lear Junction waybills the cars to Russell, Ky., where they are classified, weighed, and billed by defendant. Empty cars for complainant are placed by defendant on its interchange track at Van Lear Junction, where they are taken by the Millers Creek and placed at the various mines.

The so-called Big Sandy group-5 district comprises the territory between Richardson, Ky., on the north, and Elkhorn City, Ky., on the south, a distance of 85 miles, and includes the mines served by defendant's main line and the Elkhorn & Beaver Valley, Marrowbone, and Greasy Creek branches, the Sandy Valley & Elkhorn and Long Fork railroads, both owned by the Baltimore & Ohio, the Big Sandy & Kentucky River Railroad, an independent road, and the Millers Creek. Van Lear Junction is about 19 miles south of Richardson and about 0.5 mile south of Dawkins, where the Big Sandy & Kentucky River Railroad, 9.5 miles in length, connects with defendant. The Sandy Valley & Elkhorn, 30.3 miles in length, connects with the defendant's line at Shelby Junction, about 70 miles south of Richardson, and the Long Fork, 25.1 miles in length, connects with the Elkhorn & Beaver Valley branch of defendant at

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Martin, about 4 miles south of Beaver Creek Junction, where that branch, 6.22 miles in length, joins the main line. Beaver Creek Junction is about 41 miles south of Richardson. The Marrowbone branch, 8 miles in length, joins the main line about 8 miles north of Elkhorn City, and the Greasy Creek branch, about 3.5 miles in length, at Ward Junction, about 13 miles north of Elkhorn City. All points within this group take the same rates on coal except those on the Big Sandy & Kentucky River Railroad and, prior to October 6, 1919, those on the Millers Creek. Approximately 90 per cent of the mines in this district are further from destination in the west and northwest than Van Lear Junction.

The district rates were made applicable from mines on the Sandy Valley & Elkhorn under an agreement that the Baltimore & Ohio, which took over that road from complainant in 1909, should furnish cars for all coal shipped therefrom. Prior to federal control the Sandy Valley & Elkhorn weighed and billed coal from complainant's mines, the bulk of all coal shipped, and delivered it to defendant at Shelby Junction. The Long Fork, which is not included in the allegation of undue preference, had just about started operations when taken under federal control. An agreement between defendant and the Baltimore & Ohio, similar to that respecting the Sandy Valley & Elkhorn, was then being negotiated. During federal control both of these roads were operated as a part of defendant's road.

There are 17 mines with an allotment of 155.7 cars on the Sandy Valley & Elkhorn, which maintains four coal crews. From its junction with defendant's line the haul is 52 miles greater for the empties as well as for the loads than from the Millers Creek. The Long Fork serves 22 mines with an allotment of 57.4 cars and maintains one coal crew and a passenger crew which also handles local freight. The Marrowbone branch serves eight mines with an allotment of 61 cars and some coke ovens with an allotment of 14 cars. It maintains one crew for coal, one for passenger service, and one for freight. On the Greasy Creek branch there is but one mine with an allotment of nine cars. A coal crew is maintained to serve this mine and five mines on the main line with an allotment of 10.6 cars.

The interchange service and facilities at Van Lear Junction are practically the same as at other junctions with the main line of the defendant in this rate district. Empties are delivered and loads received by the defendant in substantially the same manner at all of the junctions, including those of its branches. Prior to federal control all coal from this district was classified, weighed, and billed by defendant at Russell, Ky., except coal of complainant originating on the Sandy Valley & Elkhorn, which was weighed and billed by the latter road. All other coal originating on that road was weighed and

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classified by defendant at Russell. Since federal control the practice as to weighing, billing, and classifying coal from this district has been uniform.

In *Rates in Chicago Switching District*, 34 I. C. C. 224, the Commission said, at page 242.

For each rate the carrier offers and obligates itself to perform a certain amount of service. If the service so offered and for a long time performed in consideration of that rate includes taking the property transported from a given point and delivering it at a given point, delivery at that point is in no sense a "free service." A carrier may increase the rate or it may curtail the service performed for that rate, but if such action is challenged it must bear the burden of showing that the new rate or service is reasonable and free from unjust discrimination.

It is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. *Oliver Chilled Plow Works v. N. Y. O. R. R. Co.*, 45 I. C. C., 356.

The absorption of the Millers Creek's switching charge from February 3, 1910, to February 1, 1912, was the voluntary act of defendant, and its cancellation had the effect of increasing the transportation charges. The burden, therefore, is upon the defendant to justify such increased charges.

Defendant seeks to justify this increase on the ground that it has been and is its policy not to divide its through rates on coal with independent roads; that its practice has been to apply its rates to the junction points with independent roads; that the absorption of the switching charge of the Millers Creek was canceled because it might constitute an undue preference to complainant, and that the rates assailed are reasonable and free from undue prejudice. This policy of defendant, which its witness testified was pursued chiefly because its rates were so low it could not afford to divide them, tends to restrict the markets for coal originating on independent roads and was condemned in *Hughes Creek Coal Co. v. K. & M. Ry. Co.*, 29 I. C. C., 671, 676. A similar policy of other roads has been condemned in other cases.

Defendant contends that the considerations which influenced the extension of the district rates to points on the Sandy Valley & Elkhorn were that this road or the Baltimore & Ohio should furnish all cars to transport coal originating thereon, and that competition with the Louisville & Nashville, which had the short line to Cincinnati, was met with at points thereon. These considerations did not exist with respect to the Millers Creek.

Defendant also seeks to justify the application of the district rates from points on the Sandy Valley & Elkhorn and the Long Fork during federal control, while not applying such rates from points on the Millers Creek, on the ground that the two roads first

named were under federal control, whereas the Millers Creek was not. That this was not considered by the Director General as a sufficient distinction may be assumed from the fact that the district rates were made applicable from points on the Millers Creek October 6, 1919, under his authority, and that the New River group-1 district rates were made applicable from points on the Sewell Valley, another independent road on the same date.

While complainant introduced some evidence showing rates on coal from other districts and ton-mile earnings thereunder, it is apparent that it is not attacking the reasonableness of the district rates but the aggregate charges resulting from the cancellation of the absorption, and is only contending that the district rates should have been applied to points on the Millers Creek.

Complainant's Millers Creek coal is a high-grade domestic coal and is sold in competition with coal originating on the lines of defendant and its connections in this rate district, and also with coal from West Virginia, eastern Kentucky, and some Ohio, Michigan, Illinois, western Kentucky, and Indiana coal fields. During that part of the two years prior to October 22, 1919, when the price of coal at the mines was fixed by the Fuel Administrator, the complainant was not obliged to and did not, except in few instances, assume any of the transportation charges. Complainant did not always absorb the transportation charges prior to the fixing of the price at the mines.

Upon consideration of the record we are of the opinion and find that the Millers Creek Railroad during the period covered by this complaint and at present was, and is, a common carrier subject to the interstate commerce act; that the rates for the transportation of bituminous coal from mines on the Millers Creek Railroad to points in central freight association territory, western classification territory, and in Canada were, are, and for the future will be unreasonable and unduly prejudicial to the extent that they exceeded or may exceed rates contemporaneously in effect from mines in the group-5 district of the Chesapeake & Ohio Railway Company to the same destinations. We further find that complainant made shipments under the rates herein found unreasonable and paid thereon either the freight charges to points of destination or the local charge of the Millers Creek Railroad, and that it has been damaged in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable. The exact amount of reparation due can not be determined upon this record, and complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

I. & S. 1197. STORAGE CHARGES ON COAL AND COKE. Rules and regulations and storage charges on open top cars and all other cars loaded with coal and coke. *G. T. Bell* for protestants. *J. E. Fairbanks* for respondents. Proceeding discontinued, March 8, 1921.

I. & S. 1218. LIVE STOCK LOADING AND UNLOADING CHARGES (2). Proposed increases in rates and charges of loading and unloading live stock at Union Stock Yards, Chicago, Ill. *O. R. Hillyer* for protestants. *R. M. Shaw* and *B. Scott* for respondents. Proceeding discontinued, March 8, 1921.

I. & S. 1225. EMPTY BEER AND CEREAL BEVERAGE PACKAGES AND BOTTLES RETURNED. Reasonableness of the proposed cancellation of commodity rates on the return movement of empty beer and cereal beverage packages from and to points in western trunk line territory, as well as the cancellation of exceptions to western classification in respect thereto, and the establishment of class rates on such traffic in lieu of said special bases. *E. H. Berg*, *W. Burkhart*, and *F. M. Elkinton* for protestants. *E. B. Boyd* for respondents. Proceeding discontinued, January 11, 1921.

I. & S. 1226. LUMBER FROM MISSOURI RIVER CROSSINGS TO WESTERN POINTS. Proposed cancellation of proportional rates on lumber and other forest products from Missouri River crossings when originating in the south and southwest, when destined to points in western trunk line territory. *C. B. Childs* for protestants. *K. F. Burgess*, *R. H. Widdicombe*, *O. W. Dynes*, *W. F. Dickinson*, and *H. G. Herbel* for respondents. Proceeding discontinued, January 11, 1921.

I. & S. 1238. COMBINATION RULE ON PETROLEUM TO CLINTON AND HARRISONVILLE, Mo. Proposed cancellation of combination rules in connection with through charges on petroleum and its products based on Clinton or Harrisonville, Mo., and to provide that hereafter the full local rates to and from those points shall apply. *C. Thorne* for protestants. *F. B. Houghton* and *C. Croskey* for respondents. Proceeding discontinued, January 11, 1921.

I. & S. 1245. CLOSING NAVIGATION VIA GREAT LAKES TRANSIT CORPORATION. Proposed closing of navigation for season of 1920 on the great lakes by the Great Lakes Transit Corporation. *L. C. Lincoln* for protestants. *F. S. Davis* and *R. N. Collier* for respondents. Proceeding discontinued, January 11, 1921.

I. & S. 1248. ALLOWANCES TO PLANT FACILITY RAILROADS AT BUFFALO. Proposed cancellation of certain terminal allowances on plant facility railroads at Buffalo, N. Y. *J. G. Dudley*, *A. W. Sawyer*, *L. M. Walter*, *J. S. Burchmore*, *J. B. O'Brien*, and *H. H. Marsales* for protestants. *R. W. Barrett*, *M. B. Pierce*, and *P. McAllister* for respondents. Proceeding discontinued, March 22, 1921.

I. & S. 1262. IRON AND STEEL ARTICLES, L. C. L., FROM JOHNSTOWN, PA., TO THE SOUTHWEST. Proposed cancellation of l. c. l. rates on iron and steel articles from Johnstown, Pa., to points in Arkansas, Louisiana, Oklahoma and Texas. *H. C. Crawford* for protestants. *F. A. Leland* for respondents. Proceeding discontinued, March 8, 1921.

I. & S. 1265. HOLLOW BUILDING BLOCKS FROM BROOKVILLE, PA., TO ALLENTOWN, PA., ETC. Proposed increased rates on hollow building blocks from Brookville, Pa., to various destinations. *E. C. Clark* and *L. B. Humphrey* for protestants. *G. Orcutt* for respondents. Proceeding discontinued, March 8, 1921.

I. & S. 1275. THROUGH RATES ON COAL AND COKE BASED ON COMBINATION OF LOCALS. Proposed changes in rates on coal and coke based on combination of locals. *C. Hirdler* for protestants. *H. J. Smith* for respondents. Proceeding discontinued, March 8, 1921.

1627. *MEEKER v. E. R. R. Co. ET AL.* Rates on anthracite coal from the anthracite region in Pennsylvania to Edgewater and Weehawken, N. J. *W. A. Glasgow* and *Shearman & Sterling* for complainant. *J. C. Stuart*, *M. E. Johns*, *G. F. Brownell*, *H. A. Taylor*, *D. Bosman*, and *J. E. Packer* for defendants. Upon stipulation of the parties complaint dismissed, February 7, 1921.

8895. BOARD OF TRADE OF THE CITY OF CHICAGO v. L. V. TRANSP. CO. ET AL. Absorption of switching and transportation charges on traffic originating at points west of the Chicago switching district, interchanged with defendant at Chicago or South Chicago, Ill., and that from mills and factories located within the Chicago district, the switching or transfer charge at Chicago is exacted in addition to the Chicago rate. *J. S. Brown* for complainant. *G. A. Schroeder*, *C. R. Hillyer*, *W. M. Hopkins*, *H. J. Campbell*, and *C. Rippin* for interveners. *I. H. Mayer*, *R. D. Barrett*, *G. A. Kelley*, *P. Meininger*, *I. L. Artes*, *H. S. Noble*, and *W. H. Bremner* for defendants. Complaint satisfied. Dismissed, March 8, 1921.

9570. MEMPHIS MERCHANTS EXCHANGE v. A. & W. RY. CO. ET AL. Rates on grain, grain products and mixed live-stock feed to points in Louisiana west of the Mississippi River. *J. B. McGinnis* for complainant. *B. F. Martin*, *H. J. Fernandez*, *J. B. McGinnis*, and *C. Rippin* for interveners. *H. Moore*, *S. S. Senne*, *F. H. Wood*, *Baker*, *Botts*, *Parker & Garwood*, *T. Bond*, *A. P. Humburg*, *J. F. Freeman*, *G. Thompson*, *Andrews*, *Shurman*, *Burns & Logue*, *R. C. Fulbright*, *R. Dunlap*, *T. J. Norton*, *R. W. Moore*, *C. S. Burg*, *J. M. Souby*, *H. G. Herbel*, *F. G. Wright*, *W. F. Dickinson*, *D. Upthegrove*, *J. R. Turney*, and *J. M. Chaney* for defendants. Dismissed for want of prosecution, March 14, 1921.

9598. EARLE COOPERAGE CO. v. ST. L., I. M. & S. RY. CO. ET AL. Rates on hardwood lumber and slack barrel material from West Memphis, Ark., to Kansas City, Mo., Omaha, Nebr., Cedar Rapids, Des Moines, Webster City, Waverly, and Gridley, Iowa, and other points. *E. A. Haid* and *A. A. Mayne* for complainant. *A. P. Humburg*, *J. L. Shepard*, *H. G. Herbel*, *C. C. P. Rausch*, and *G. E. Schnitzer* for defendants. Dismissed on request of complainant, March 8, 1921.

9599. EARLE COOPERAGE CO. v. ST. L., I. M. & S. RY. CO. ET AL. Rates on hardwood lumber and slack barrel material from West Memphis, Ark., to points in c. f. a. and trunk-line territories. *E. A. Haid* and *A. A. Mayne* for complainant. *P. Geesford*, *F. C. Baird*, *C. G. Austin, jr.*, *P. L. Gerhardt*, *T. A. Hynes*, *P. J. Murphy*, *Winston*, *Payne*, *Straun & Shaw*, *W. L. Louis*, *P. B. Warren*, *S. S. Perry*, *W. C. Synder*, *W. J. Turner*, *A. P. Humburg*, *W. A. Parker*, *A. H. Lossow*, *B. W. Scandrett*, *C. F. Hotchkiss*, *E. W. Beatty*, *O. W. Dynes*, *W. A. Colston*, *W. A. Northcutt*, *G. S. Hobbs*, *M. R. Waite*, *J. M. Elliott*, *D. L. Gray*, *T. H. Burgess*, *M. B. Pierce*, *W. J. Larrabee*, *W. F. Kinter*, *E. S. Burrow*, *Dudley & Michener*, *E. W. Knight*, *G. A. Wingfield*, *D. G. Gray*, *Glennon*, *Cary*, *Walker & Howe*, *F. M. Miner*, *R. H. Widdicombe*, *J. Stillwell*, *C. E. Devey*, *J. C. Murray*, *R. L. Burnap*, *H. G. Herbel*, *F. G. Wright*, *C. B. Cardy*, *R. W. Moore*, and *W. F. Dickinson* for defendants. Dismissed on request of complainant, March 8, 1921.

60 I. O. C.

9986. NATIONAL LIVE STOCK SHIPPERS' PROTECTIVE LEAGUE ET AL. v. L. & N. R. R. Co. ET AL. Rates on live stock from points west of the Mississippi River to points in southern classification territory east of the Mississippi River. *W. H. Ingram, H. C. Patterson, S. H. Cowan, O. B. Heinemann, and G. Cary* for complainants. *C. H. Farrell, C. B. Stafford, M. M. Caskie, H. E. Snow, G. N. Freer, S. H. Cowan, S. C. Rowe, E. B. Spiller, W. A. Burnett, D. A. DeVane, F. Roberson, and R. D. Rynder* for interveners. *C. Giassow, P. Portel, E. H. Hart, H. H. Preston, H. Thurtell, L. P. Nash, F. W. Gwothmey, R. W. Moore, W. A. Northcutt, J. M. Chaney, F. B. Clark, G. Waldo, Baker, Botta, Parker & Garwood, E. H. Thornton, N. Parks, F. H. Wood, C. W. Owen, T. J. Norlon, J. S. Hershey, D. P. Connell, C. H. McNair, R. C. Fulbright, L. M. Hogsett, W. F. Murray, G. S. Trowbridge, M. J. Dowlin, R. N. Nash, J. F. Garvin, R. D. Williams, C. Schonfelder, jr., C. W. Brosius, E. C. Sides, J. T. Bowe, and Thompson, Barwise & Wharton* for defendants. Dismissed for want of prosecution, February 7, 1921.

10115. ILLINOIS TERMINAL RATE CANCELLATIONS. Authority to cancel rates to and from points on the Illinois Terminal R. R. *J. V. E. Marsh and A. W. Sherwood* for protestants. *E. Hart, jr., K. F. Burgess, W. Gray, F. H. Towner, C. W. Galligan, P. W. Brown, S. A. Townsend, H. G. Powell, W. B. Alderson, J. W. Allen, C. C. P. Rawsch, W. K. Vandiver, D. P. Williams, R. N. Nash, and D. H. Hammelkamp* for respondents. Proceeding discontinued, February 7, 1921.

10209. ROWLAND & Co. v. D., L. & W. R. R. Co. ET AL. Icing charges on shipments of butter from Dickens, Iowa, to New York, N. Y. *H. J. Witte* for complainant. *O. E. Dewey, O. W. Dynes, and J. N. Davis* for defendants. Proceeding having been disposed of by decision of the Commission in 51 I. C. C., 34, complaint dismissed, February 7, 1921.

10275. PITTSBURGH STEEL Co. v. P. & L. E. R. R. Co. ET AL. Rates on coal from Pennsylvania mines to Monessen, Pa. *Ellis & Donaldson* and *W. F. McCook* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant, March 8, 1921.

10276. PITTSBURGH STEEL Co. v. DIRECTOR GENERAL ET AL. Rates on coke from Allison and Alicia, Pa., to Monessen, Pa. *Ellis & Donaldson* and *W. F. McCook* for complainant. *R. W. Moore* for defendants. Dismissed on request of complainant, March 8, 1921.

10504 and Sub-Nos. 1, 2, 3, 4, 5, and 6. DUPONT DE NEMOURS & Co. v. DIRECTOR GENERAL ET AL. Rates on lumber from Bailey, N. B., and points in Maine, to Newbridge and Wilmington, Del., and Gibbstown and Parlin, N. J., milled into box shooks at Deering Junction and Smiths Mill, Me. *H. S. Farrow* for complainant. *C. H. Blatchford, J. F. Flerty, and F. M. Libbey* for defendants. Dismissed on request of complainant, March 8, 1921.

10713. CADILLAC MOTOR CAR Co. v. DIRECTOR GENERAL ET AL. Rating on electric storage batteries and parts shipped from Philadelphia, Pa., to Detroit, Mich. *G. A. Main* for complainant. *H. C. Martin and R. V. Fletcher* for defendants. Dismissed on request of complainant, March 8, 1921.

10820 and Sub-Nos. 1 and 2. COHEN-SCHWARTZ RAIL & STEEL Co. v. M., K. & T. Ry. Co. ET AL. Rates on scrap iron from Dallas, Tex., to St. Louis, Mo. *A. E. Haid and L. Mayer* for complainant. *O. S. Burg* for defendants. Complaint satisfied. Dismissed, February 7, 1921.

11383. HOWARD v. DIRECTOR GENERAL ET AL. Rates on automobiles transported in cars 41 feet 9 inches in length in lieu of 40-foot cars ordered, shipped from Flint, Mich., to San Francisco, Calif. *C. Clifford* for complainant. *S. F. Otis* for defendants. Complaint satisfied. Dismissed, March 8, 1921.

11581. *LOEWENTHAL CO. ET AL. v. G. T. W. RY. CO. ET AL.* Fifth-class rates on rubber tires from Chicago, Ill., to Mishawaka, Ind., Akron, Ohio, Buffalo, N. Y., Titusville and Butler, N. J., Cambridge, Mass., and Naugatuck, Conn. *J. D. Gray* and *J. E. Hart* for complainants. *F. W. Smith, C. D. Clark, and R. McKenna* for defendants. Dismissed on request of complainants, January 11, 1921.

11602. *MASSAR LUMBER CO. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on coal from Peerless, Utah, to Mount Vernon, Wash. *J. B. Campbell* and *R. S. Brown* for complainant. *R. J. Hagman* for defendants. Dismissed on request of complainant, January 11, 1921.

11641. *EAGLE COTTON OIL CO. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on crude cottonseed oil in tank cars, from Harvey, La., to Meridian, Miss. *T. P. Goodwin* for complainant. *J. F. Finerty, F. H. Wood, and C. J. Risey, Jr.*, for defendants. Dismissed on request of complainant, February 7, 1921.

11661. *ROWLAND-POWER CONSOLIDATED COLLIERIES CO. v. P., C., C. & ST. L. R. R. CO. ET AL.* Car distribution and mine regulations in respect to transportation of coal from mines located near Staunton, Ind. *O. E. Heckler* and *C. B. Cady* for complainant. No appearance for defendants. Complaint satisfied. Dismissed, January 11, 1921.

11666. *HAWKINS v. S. P. CO. ET AL.* Rates on second-hand alfalfa sacks from San Francisco, Calif., to Rupert, Idaho. No appearance for complainant. *J. O. Moran* for defendants. Dismissed for lack of prosecution, February 7, 1921.

11702 and Sub-No. 1. *CENTRAL WISCONSIN SUPPLY CO. v. G. N. RY. CO.* Storage charges on carload shipment of lumber and forest products from Seattle, Wash., to Minnesota Transfer, Minn., reconsigned to Fox Lake, Wis. *B. T. Batley* and *Clark & Lueck* for complainant. *W. J. Duffy* and *Brown & Doyle* for interveners. *F. G. Dorety, R. J. Hagman, A. H. Lossow, and J. F. Finerty* for defendants. Dismissed on request of complainants, January 11, 1921.

11731. *CAPE GIRARDEAU PORTLAND CEMENT CO. v. ST. L.-S. F. RY. CO.* Switching charges on cement from complainant's mill within the limits of the Cape Girardeau switching district. *G. B. Webster* for complainant. *B. H. Stunage* for defendant. Dismissed on request of complainant, January 11, 1921.

11769. *CANTON GAS AND ELECTRIC CO. v. DIRECTOR GENERAL, AS AGENT.* Rates on coal from St. David, Norris, and Canton, Ill., to Canton, Ill. *E. H. Negley* for complainant. *K. L. Burgess* and *J. F. Finerty* for defendants. Transferred to Special Docket for adjustment, January 17, 1921.

11784 and Sub-No. 1. *SILICA SAND PRODUCERS' TRAFFIC ASSO. OF ILLINOIS v. B. & O. R. R. CO. ET AL.* Rates on flint pebbles from Bedford and Buffington, Ind., to Ottawa, Ill. *R. E. Riley* for complainant. *W. A. Eggers* and *H. I. Allen* for defendants. Dismissed on request of complainants, January 11, 1921.

11832. *SIMMONS & CO. v. DIRECTOR GENERAL, AS AGENT.* Rates on mustard seed from Seattle, Wash., to Philadelphia, Pa., returned to Seattle, Wash., and Wolf Point, Mont. *E. D. Melcher* for complainant. *F. M. Preston* for defendants. Complaint satisfied. Dismissed, February 7, 1921.

11841. *WEBER CHIMNEY CO. v. DIRECTOR GENERAL, AS AGENT.* Rate on one car loaded with a contractor's outfit from Alliance, Nebr., to Pierre, S. Dak. *S. J. Bolton* for complainant. *R. H. Widdicombe, K. F. Burgess, and J. F. Finerty* for defendants. Dismissed for lack of prosecution, January 11, 1921.

11884. *TRAFFIC BUREAU OF THE CHAMBER OF COMMERCE, PHOENIX, ARIZ. v. PULLMAN CO. ET AL.* Sleeping car rates from Phoenix, Ariz., to Los Angeles, Calif. *R. Johnston* for complainant. *T. J. Norton, F. E. Andrews, G. S. Fernald, F. H. Wood, E. Westlake, and C. W. Durbrow* for defendants. Complaint satisfied. Dismissed, February 7, 1921.

11890. SLOGO COAL Co. v. M. P. R. R. Co. ET AL. Rates on bituminous coal from complainant's mines at Johnson City, Ill., to destinations on the C., B. & Q. R. R. R. W. Ropiequet for complainant. C. O. P. Rausch, W. I. Jones, and H. E. Heller for defendants. Complaint satisfied. Dismissed, February 7, 1921.

11922. SCHANCK, HUTCHINSON, SR., AND FIELD v. P. R. R. Co. ET AL. Rates on rye and wheat from Hightstown and Robbinsville, N. J., to New York, N. Y. No appearance for complainant. A. Dodson and R. McKenna for defendants. Dismissed on request of complainant, March 6, 1921.

11927. LADD v. G. S. W. Ry. ET AL. Rates on lumber and ties from Star City, Ark., to various destinations. A. D. Beals and H. M. Gregory for complainant. C. O. P. Rausch and C. E. Fish for defendants. Dismissed on request of complainant, February 7, 1921.

11957. NORTH PACIFIC MILLERS ASSO. v. N. P. Ry. Co. Furnishing cars on shipments of grain and mill products and the protection of minimum weight for size of car ordered when a larger car is or has been furnished at defendant's convenience. R. D. Lytle, F. A. Johnson, and R. W. Von Liew for complainant. L. R. Capron for defendant. Dismissed on request of complainant, February 7, 1921.

12015. DUPONT ENGINEERING Co. v. DIRECTOR GENERAL, AS AGENT. Rates on sand from Kelly's pit, Grand Rapids, Mich., to Detroit, Mich. W. A. Simonton for complainant. J. F. Finerty for defendant. Dismissed on request of complainant, February 7, 1921.

12017. ST. LOUIS-SAN FRANCISCO Ry. Co. v. EL ST. L. & S. Ry. Co. ET AL. Joint through rates on bituminous coal from Illinois mines to complainant's coaling station at Chouteau Ave., St. Louis, Mo. M. G. Roberts and R. N. Nash for complainant. Ropiequet & Ropiequet for interveners. M. W. Schaefer and Whitnel & Whitnel for defendants. Dismissed on request of complainant, March 8, 1921.

12037. BOROUGH OF SOUTH GREENSBURG v. AM. Ry. Exp. Co. Collection and delivery charges on property carried by express company in South Greensburg, Pa. H. H. Dinmore for complainant. No appearance for defendant. Dismissed on request of complainant, February 7, 1921.

12045. SEVIER & WEED v. S. P. Co. ET AL. Rates on sheep in double deck cars from Chiloquin, Oreg., to North Portland, Oreg. A. M. Geary for complainant. H. A. Scandrett, A. C. Spencer, and J. F. Reilly for defendants. Dismissed on request of complainant, March 8, 1921.

12080. LEA & Co. (INC.) v. R., F. & P. R. R. Co. ET AL. Rates on box shooks from Richmond, Va., to New York, N. Y. J. H. Cannon for complainant. F. R. Cross, F. W. Gwothmey, and H. W. Bickel for defendants. Dismissed on request of complainant, March 8, 1921.

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6385, 6543, and 6544. MUSKOGEE WHOLESALE GROCER Co. v. M., K. & T. RY. Co., PHOENIX PRINTING Co. v. M., K. & T. RY. Co., AND ADLETA PAPER Co. v. C. & N. W. RY. Co. February 7, 1921. Reparation for \$2,922.71, on wrapping paper and news print paper from points in Minnesota, Wisconsin, and Michigan to Tulsa, Muskogee, and McAlester, Okla., on account of unreasonable rates.

9046. HURON MILLING Co. v. P. M. R. R. Co. February 7, 1921. Reparation for \$731.55, on account of damages due to refusal of carrier to make to complainant an allowance for its service in switching certain shipments between loading and unloading points in complainant's plant and defendant's yard at Harbor Beach, Mich., and for switching cars to and from unloading and loading places at the same point.

9066. CHANNEL CHEMICAL Co. v. A., T. & S. F. RY. Co. February 7, 1921. Reparation for \$44,522.63, on shipments of O'Cedar pollah, and mop handles, from Chicago, Ill., to Pacific coast terminals, on account of unreasonable rates.

9749. W. VA. RAIL Co. v. S. RY. Co. February 7, 1921. Reparation for \$870.71, on shipments of scrap steel rails from New Orleans, La., to Huntington, W. Va., on account of unreasonable rates.

9682. W. VA. RAIL Co. v. B. & O. R. R. Co. February 7, 1921. Reparation for \$969.23, on shipments of iron and steel rails from Huntington, W. Va., to Birmingham, Ala., and points taking the same rates, on account of unreasonable and illegal rate.

10272. LODWICK LUMBER Co. v. B., S. L. & W. RY. Co. February 7, 1921. Reparation for \$151.98, on shipments of lumber from Dyersdale, Tex., to Deming, N. Mex., on account of unreasonable charge.

10377. OATMAN CONDENSED MILK Co. v. B. & O. C. T. R. R. Co. February 7, 1921. Reparation for \$1,313.71, on shipments of evaporated milk from Neillville, Wis., to New York, N. Y., on account of unreasonable rate.

10367 and 10367 (Sub-No. 1) GOSLINE & Co. v. D. & H. Co. February 7, 1921. Reparation for \$2,143.06, on shipments of coal from points in the Pennsylvania coal district via Buffalo, N. Y., to Toledo, Ohio, on account of unreasonable rate.

10463. GILL v. ERIE R. R. Co. February 7, 1921. Reparation for \$964.48, on shipments of grapes from Hammondsport, N. Y., to Newark, N. J., on account of unreasonable rate.

10516. KANS. OIL REF. Co. v. K. C., C. & S. RY. Co. February 7, 1921. Reparation for \$1,333.20, on shipments of petroleum oil and gasoline from Coffeyville, Kans., to Garden City, Mo., on account of unreasonable rates.

10518. DU PORT DE NEMOURS & Co. v. P. & R. RY. Co. February 7, 1921. Reparation for \$497.47, on shipments of palm flour from Gibbstown, N. J., to American Lake, Wash., on account of unreasonable rate.

10690. LA SALLE COUNTY CARMEN COAL Co. v. C., M. & ST. P. RY. Co. February 7, 1921. Reparation for \$2,187.52, on passenger-train service during the period from September 23, 1918, to October 31, 1918, between Oglesby, Ill., and Cedar Point, Ill., on account of illegal charges.

10705. *WARD & NORTHBUP v. N. Y., P. & N. R. R. Co.* February 7, 1921. Reparation for \$3,281.07, on shipments of mine props from points on the eastern shore of Virginia, Delaware, and Maryland to Shenandoah, Pa., and points taking same rates, on account of unreasonable rates.

10778 and 10778 (Sub-No. 1). *85 MINING Co. v. A. & N. M. Ry. Co.* February 7, 1921. Reparation for \$405.85, on shipments of fuel oil from Shale and Kerto, Calif., to "85 Mine," N. Mex., on account of unreasonable rate.

10795. *LESSER-GOLDMAN COTTON Co. v. N. W. R. R. Co.* February 7, 1921. Reparation for \$670.74, on shipments of cotton from Emerson, Ark., to Magnolia, Ark., there compressed, and reshipped to destinations in New Hampshire and Massachusetts, on account of misrouting.

10997. *NATL. FUEL Co. v. C. & S. Ry. Co.* February 7, 1921. Reparation for \$600, on shipments of water from Monson, Colo., to Rapson Mine, near Rugby, Colo., and from Trinidad, Colo., to Suffield, Colo., on account of unreasonable charges.

11016. *BARE PAPER Co. v. R. F. & P. R. R. Co.* February 7, 1921. Reparation for \$3,843, on shipments of pulp wood from points in Virginia to Roaring Spring, Pa., on account of unreasonable and unduly prejudicial rates.

11041. *ARMOUR GRAIN Co. v. C. & N. W. Ry. Co.* February 7, 1921. Reparation for \$760.93, on shipments of oats from points in Minnesota, North Dakota, and South Dakota to Pacific coast points, on account of unreasonable minimum carload weight provision.

11156. *CENTRAL PA. LUMBER Co. v. B. & O. R. R. Co.* February 7, 1921. Reparation for \$1,383.33, on shipments of coal from Lucinda, Pa., via Waverly, N. Y., to Ricketts, Pa., on account of unreasonable rates.

4800. *GLOSS-SHEFFIELD STEEL & IRON Co. v. L. & N. R. R. Co.* March 8, 1921. Reparation for \$317.64, on shipments of pig iron from Woodward and Oxmoor, Ala., to Quincy, Ill., on account of unreasonable rates.

8803. *NASHVILLE HARDWOOD FLOORING Co. v. C., B. & Q. R. R. Co.* March 8, 1921. Reparation for \$39.79, on shipments of binder slats from Nashville, Tenn., to Peoria and East Moline, Ill., on account of unreasonable rate.

8751. *BARBER AGENCY Co. v. K. & E. Ry. Co.* March 8, 1921. Reparation for \$152.41, on shipments of rosin from Wilmer, La., to Minneapolis, Minn., on account of unreasonable rates.

8875, 8875 (Sub-No. 1), and 8876 (Sub-Nos. 1 and 2). *ARMSTRONGS v. N. Y., P. & N. R. R. Co., and BRANDON v. N. Y., P. & N. R. R. Co.* March 8, 1921. Reparation for \$4,553.73, on shipments of mine props from points in Maryland, Virginia, and Delaware to points in Pennsylvania, on account of unreasonable rates.

9849 and 9849 (Sub-Nos. 1, 5, 6, 19, and 21). *DU PONT DE NEMOURS & Co. v. L. & N. R. R. Co.* March 8, 1921. Reparation for \$9,139.78, on shipments of sulphuric acid from points in Florida, Alabama, and Georgia to Hopewell, Va., on account of unreasonable rates.

9885. *FREEDER'S SUPPLY Co. v. C., B. & Q. R. R. Co.* March 8, 1921. Reparation for \$1,156.49, on shipments of cottonseed-hull bran from East St. Louis, Ill., to Kansas City, Mo., on account of unreasonable rate.

10219. *NAYLOR & Co. v. D., L. & W. R. R. Co.* March 8, 1921. Reparation for \$298.75, on shipments of pig iron, on account of unreasonable storage charges at Hoboken, N. J.

10299. *ILL. COAL TRAFFIC BUREAU v. A., T. & S. F. Ry. Co.* March 8, 1921. Reparation for \$4,436.50, on shipments of water within the state of Illinois, on account of unreasonable rates.

10308. PADUCAH BOARD OF TRADE *v.* I. C. R. R. Co. March 8, 1921. Reparation for \$3,417.46, on shipments of lumber and articles taking the lumber rates from points in the western portion of the southwestern lumber blanket to Paducah, Ky., on account of unreasonable rates.

10440. STEEL CITIES CHEMICAL Co. *v.* N. & W. Ry. Co. March 8, 1921. Reparation for \$1,491.21, on shipments of sulphuric acid from Hopewell, Va., to point in Alabama, on account of unreasonable rate.

10481. ROGERS-BROWN IRON Co. *v.* DIRECTOR GENERAL. March 8, 1921. Reparation for \$12,329.41, on shipments of limestone within the city of Buffalo, N. Y., on account of unreasonable charge.

10542. CHAMBER OF COMMERCE OF MONTGOMERY, ALA., *v.* L. & N. R. R. Co. March 8, 1921. Reparation for \$539.78, on shipments of sugar from New Orleans, La., to Montgomery, Ala., on account of unreasonable rates.

10580. DU PONT DE NEMOURS & Co. *v.* E. B. T. R. R. & C. Co. March 8, 1921. Reparation for \$7,755.54, on shipments of coal from mines in Pennsylvania to Carney's Point, N. J., on account of unreasonable diversion rule applied.

1062. INTERSTATE IRON & STEEL Co. *v.* P. R. R. Co. March 8, 1921. Reparation for \$1,372.53, on shipments of mill cinder from East Chicago, Ind., to Detroit, Mich., on account of unreasonable rates.

10769. KEY-JAMES BRICK Co. *v.* S. Ry. Co. March, 8, 1921. Reparation for \$341.57, on shipments of brick from Chattanooga, Tenn., to Asheville, N. C., on account of unreasonable rate.

11001. STOUT LUMBER Co. *v.* St. L.-S. F. Ry. Co. March 8, 1921. Reparation for \$416.70, on shipments of lumber from Thornton and Bests, Ark., to Hayti, Mo., on account of unreasonable rates.

11068. NORTHERN POTATO TRAFFIC ASSO. *v.* C., B. & Q. R. R. Co. March 8, 1921. Reparation for \$272.52, on shipments of potatoes from points in Minnesota to Camp Custer, Mich., on account of unreasonable rates.

11079. GENERAL AMERICAN OIL Co. *v.* B., S. L. & W. Ry. Co. March 8, 1921. Reparation for \$3,202.94, on shipments of kerosene oil from Electra and Brownwood, Tex., to Kassel, La., and reshipped to Baton Rouge, La., for export, on account of unreasonable rates.

11141. CLEVELAND-CLIFFS IRON Co. *v.* M., M. & S. Ry. Co. March 8, 1921. Reparation for \$1,694.30, on shipments of sulphuric acid from New Furnace, Mich., to Steelton, Minn., on account of unreasonable rates.

NOTE.—The amount of reparation awarded in the above cases aggregates \$122,477.27.

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TABLE OF COMMODITIES.

(The numbers in parentheses following citations indicate where commodity is considered.)

ACID. Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind., 583.

ACID, SULPHURIC:

Atlanta, Ga., to La Grange, Ga., 201.

Coffeyville, Kans., to Eldorado, Kans., 125.

Danville, Ill., to Hoopeston, Ill., 720.

New Orleans, La., to Orange, Tex., 451.

Paulsboro, N. J., to Rockford, Del., 243.

APPLES. Atlantic seaboard from various points. Storage-in-transit arrangements, 333.

ASHES. Coatesville, Pa., to Carney's Point, N. J., 621.

AUTOMOBILE PARTS. Milwaukee, Wis., to Los Angeles, Calif., 179.

BLOCKS, GYPSUM HOLLOW BUILDING. Grand Rapids, Mich., to Asylum, Tenn., 141.

BOARD, CHIP. Western trunk line territory, 191.

BOLTS, WOOD. Michigan and Wisconsin to Menominee, Mich., and points in Wisconsin, 350.

BOTTLES, GLASS. Huntington, W. Va., to Midway and Frankfort, Ky., 495.

BRAID, CHIP. San Francisco, Calif., and Tacoma and Seattle, Wash., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, imported from Japan and China, 272.

BRAID, STRAW. San Francisco, Calif., and Tacoma and Seattle, Wash., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, imported from Japan and China, 272.

BRICK:

Florida. Increase in rates, 551 (554).

Georgia. Increase in rates, 527.

Indiana. Increase in rates, 337 (341).

South Carolina. Increase in rates, 290 (300).

Westport, Mo., from various points, 278.

BRICK, COMMON. Meridian, Miss., to and from Alabama. Rating, 5 (26).

BRICK, FIRE. Meridian, Miss., to and from Alabama. Rating, 5 (26).

BRIMSTONE:

Baltimore, Md., to Philadelphia, Pa., 221.

New York harbor to Philadelphia, Pa., Paulsboro and Carney's Point, N. J., 221.

BUILDING MATERIAL. Meridian, Miss., to and from Alabama. Rating, 5 (26).

BUMPERS, AUTOMOBILE. See Balls, Auto Guard.

BUTTERMILK. Ohio. Increase in rates, 78.

BUTTS, JUTE. East Boston, Mass., to Ludlow Junction, Mass., 441.

CAKE, COTTONSEED. Meridian, Miss., to and from Alabama. Rating, 5 (24).

CARRIERS, AUTOMOBILE TIRE. Detroit, Mich., to Flint, Mich., 669.

CATTLE. Illinois to Indianapolis, Ind., 67.

CATTLE, FAT. Nevada. Increase in rates, 623.

CEMENT:

Florida. Increase in rates, 551 (554).

North Charleston Port Terminals, S. C., to Charleston, S. C., 149.

South Carolina. Increase in rates, 290 (300).

Universal, Pa., to Benham, Ky., 489.

Westport, Mo., from various points, 278.

CHANNELS, STEEL. Milwaukee, Wis., to Los Angeles, Calif., 179.

CHATS. Westport, Mo., from various points, 278.

CHEESE, COTTAGE. Ohio. Increase in rates, 78.

CHEST. Meridian, Miss., to and from Alabama. Rating, 5 (26).

CHIP BOARD. *See* BOARD, CHIP.

CINDERS. Coatesville, Pa., to Carney's Point, N. J., 621.

CLASS AND COMMODITY RATES:

Augusta, Ga., to and from points on Augusta Northern Railway, 324.

Meridian, Miss., to and from Alabama, 5.

Natchez, Miss., and Vidalia, La., to Chicago, Peoria, and Springfield, Ill.,
Milwaukee, Wis., and other points, 276.

Westport, Mo., from various points, 278.

CLASS RATES:

Cairo, Ill., to and from Missouri, 519.

Fort Dodge, Iowa, to Minnesota, South Dakota, and North Dakota, 224.

CLAY, KAOLIN. Edgar, Fla., to East Palestine, Ohio, diverted to Columbus,
Ohio, 372.

CLOTH, HAIR PRESS. Houston, Tex., to Vicksburg, Miss., and New Orleans,
La., 414.

CLOTH, WOOL PRESS. Houston, Tex., to Vicksburg, Miss., and New Orleans,
La., 414.

COAL:

Belleville district, Ill., to Missouri, 250.

Castle Gate group, Utah, to various destinations, 674.

Duluth, Minn., Superior, Wis., and other points at the head of the lakes,
to Minnesota, North Dakota, and South Dakota, 687.

Grantsville, Md. Car distribution, 232.

Higginsville, Mo., to Missouri and Kansas, 715.

Indiana. Increase in rates, 337 (344).

Kentucky and Tennessee mines to Atlanta, Ga., via Cartersville, Ga.
Routing, 509.

Kentucky, Tennessee, and Virginia to central territory, Illinois, Iowa,
Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin, 166.

Meridian, Miss., to and from Alabama. Rating, 5 (24).

Rockford, Ill. Reconsignment, 217.

Utah. Increase in rates, 388.

Westport, Mo., from various points, 278.

West Virginia mines. Car distribution, 315; 569.

Worth, Pa., from Grantsville, Md., 232.

COAL, ANTHRACITE. New York lighterage station, N. J., from Plymouth, Luzerne,
and Kingston, Pa., 133.

COAL, BITUMINOUS:

Coulterville, Ill., to Illinois and Missouri, 52.

Johnson county, Ky., to c. f. a. and western classification territories, and Canada, 763.

Kanawha district, W. Va., to Massillon, Ohio, 443.

Missionfield, Ill., to Chicago, Milford, and Jamaica, Ill., via Bronson, Ill., 683.

Nokomis, Ill., to Shopiere, Wis., 199.

Nokomis, Ill., to Union Grove, Wis., 214.

Pennsylvania mines to Washington and Uniontown, D. C., and Alexandria, Va., 147.

Philadelphia, Pa., 355.

Sugar Creek, Ohio, to Dover (Parral), Ohio, 499.

COAL, CHESTNUT. Brewer, Okla., to Bauxite, Ark., 457.

COKE. Meridian, Miss., to and from Alabama. Rating, 5 (24).

COPRA. Dallas, Tex., from Seattle and Tacoma, Wash., 465.

COPRA, IMPORTED. San Francisco and Oakland, Calif., and Seattle and Tacoma, Wash., to New Orleans and Baton Rouge, La., 357.

COTTON:

Florida. Increase in rates, 551 (554).

Galveston, Tex., from Bradley, Buckner, and Waldo, Ark., compressed in transit at Texarkana, Ark.-Tex., Longview or Marshall, Tex., 666.

Georgia. Increase in rates, 527.

Louisiana. Increase in rates, 467.

Meridian, Miss., to and from Alabama. Rating, 5 (27).

South Carolina. Increase in rates, 290 (300).

COTTONSEED:

Charlotte, N. C., to Augusta and Atlanta, Ga., 281.

Clarkton, Mo., to Cairo, Ill., 139.

Louisiana to Newton, Miss., 433.

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Pageland, S. C., to Atlanta, Ga., 661.

Somerville, Tenn., to Atlanta, Ga., 505.

South Carolina. Increase in rates, 290 (300).

CREAM:

Hartford, Conn., from Cloverdale and Middlesex, Vt., 237.

Illinois. Increase in rates, 92.

Indiana. Increase in rates, 337.

Louisiana. Increase in rates, 467.

Ohio. Increase in rates, 78.

CROSSTIES, WOODEN. Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 643.

CULVERTS, CAST-IRON. Gallon, Ohio, to Oklahoma, Kansas, and Nebraska, 515.

CYANIDE OF POTASSIUM. Nevada. Increase in rates, 623.

CYLINDER STOCK, STEAM. Salt Lake City, Utah, to Cleveland, Ohio, 185.

DOLOMITE, CRUDE. Union Stone Company, Pa., to Midland, Pa., 503.

FED, LIVE STOCK. Chicago, Ill., to Buffalo, N. Y., reshipped to Montrose, Pa., 155.

FERTILIZER:

Indiana. Increase in rates, 337 (342).

Meridian, Miss., to and from Alabama. Rating, 5 (24).

Mobile, Ala., to Louisiana, 321.

South Carolina. Increase in rates, 290 (300).

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FERTILIZER MATERIAL. Meridian, Miss., to and from Alabama. Rating, 5 (24).
FLAXSEED. Des Moines, Iowa, from Minneapolis, St. Paul, and Duluth, Minn., 403.

FLOUR:

Jersey City, N. J. Storage, 151.
 Minneapolis, Minn. Demurrage, 157.
 Nevada. Increase in rates, 623.

FOREST PRODUCTS:

South Carolina. Increase in rates, 290 (800).
 Westport, Mo., from various points, 278.

FRUIT. Florida. Packing requirements, 551 (553).

FRUITS, CITRUS. California to Salt Lake City and Ogden, Utah, 733.

FRUITS, DECIDUOUS. California to Salt Lake City and Ogden, Utah, 733.

GASOLINE:

Florida. Increase in rates, 551 (554).
 Iowa Park, Tex., to Westwego, La., for export, 655.

GEUCOSE. Chicago, Pekin, and Waukegan, Ill., Roby, Ind., and Clinton, Davenport, and Keokuk, Iowa, to Birmingham, Montgomery, and Dothan, Ala., 203.

GRAIN:

Arkansas from Mississippi and Missouri river crossings and related points, 586.

Cazenovia, N. Y. Storage, 652.

Kansas City, Mo.-Kans., from St. Louis and other Missouri points, Peoria, Chicago, and other Illinois points, St. Paul and other Minnesota points, Wisconsin, Iowa, and Michigan, 128.

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Nebraska. Increase in rates, 805 (310).

Texas to and from Texas and Shreveport, La., 818.

Westport, Mo., from various points, 278.

GRAIN PRODUCTS:

Arkansas from Mississippi and Missouri river crossings and related points, 586.

Cazenovia, N. Y. Storage, 652.

Kansas City, Mo.-Kans., from St. Louis and other Missouri points, Peoria, Chicago, and other Illinois points, St. Paul and other Minnesota points, Wisconsin, Iowa, and Michigan, 128.

Minneapolis, Minn. Demurrage, 157.

Texas to and from Texas and Shreveport, La., 818.

Westport, Mo., from various points, 278.

GRAVEL:

Florida. Increase in rates, 551 (554).

Louisiana. Increase in rates, 467.

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Nebraska. Increase in rates, 805 (311).

South Carolina. Increase in rates, 290 (800).

HANDLE MATERIAL. Blytheville, Ark., to Memphis, Tenn., Thebes, Ill., St. Louis, Mo., Fort Madison, Iowa, Fort Wayne, Ind., Jackson, Mich., Columbus, Ashabula, and Geneva, Ohio, Binghampton, N. Y., and Philadelphia, Pa., 85.

HAY:

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Nebraska. Increase in rates, 805 (311).

Rupert, Idaho, to various destinations. Minimum weights, 188.

Westport, Mo., from various points, 278.

HIDES, GREEN SALTED. Cheyenne, Wyo., to Salt Lake City, Utah, 657.

HOGS. Illinois to Indianapolis, Ind., 67.

HORSES. Wichita, Kans., to Arkansas, Louisiana, and Texas, and Memphis, Tenn., 536.

HOUSEHOLD GOODS. Meridian, Miss., to and from Alabama. Rating, 5 (26).

HULLS, COTTONSEED. South Carolina. Increase in rates, 290 (300).

ICE:

Lancaster, Pa., to Washington, D. C., 145.

South Carolina. Increase in rates, 290 (300).

IMPLEMENTS, AGRICULTURAL. Meridian, Miss., to and from Alabama. Rating, 5 (26).

IRON ARTICLES. Pacific coast ports from Chicago, Ill., and Terre Haute and Vincennes, Ind., 640.

IRON, PIG. Alabama and Tennessee to Ohio River crossings and c. f. a. territory, 595.

IRON, SCRAP. South Carolina. Increase in rates, 290 (300).

JUTE. East Boston, Mass., to Ludlow Junction, Mass., 441.

KEROSENE. Cushing, Okla., to Vaughn, N. Mex., 379.

LATHS. Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 643.

LEMONS. Fillmore, Calif., to El Paso, Tex., 455.

LIME:

Carson (Riverton), Va. Switching charges, 123.

Florida. Increase in rates, 551 (554).

South Carolina. Increase in rates, 290 (300).

Westport, Mo., from various points, 278.

LIMESTONE. Carson (Riverton), Va. Switching charges, 123.

LINTERS, COTTON. Georgia. Increase in rates, 527.

LIVE STOCK:

Meridian, Miss., to and from Alabama. Rating, 5 (25).

Nebraska. Increase in rates, 305 (310).

South Carolina. Increase in rates, 290 (300).

LOCOMOTIVE PARTS. New York, N. Y., to Bellwood, Pa., 423.

LOGS:

Indiana. Increase in rates, 337 (343).

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Wilkeson, Wash., to Tacoma and Kenndale, Wash., 162.

LOGS, SAW. Michigan and Wisconsin to Menominee, Mich., and points in Wisconsin, 350.

LUMBER:

Chicago, Ill., to eastern trunk line and central territories, 590.

Coeur d'Alene, Idaho. Switching charges, 275.

Long Lake, Wis., to Dorchester, Wis., 265.

Maybrook, N. Y. Demurrage, 739.

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Nebraska. Increase in rates, 305 (311).

Nevada. Increase in rates, 623.

South Carolina. Increase in rates, 290 (300).

Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 643.

Westport, Mo., from various points, 278.

LUMBER—Continued.

Wiergate, Tex., to Little Falls, N. Y., reconsigned to Auburn, Me., and Hartford and Thomaston, Conn., 718.

LUMBER ARTICLES. Coeur d'Alene, Idaho. Switching charges, 275.

MALT, BARLEY. Great Falls, Mont., to Milwaukee, Wis., 114.

MEAL, COTTONSEED. Meridian, Miss., to and from Alabama. Rating, 5 (24).

MEAT, FRESH. Canada to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn., 747.

MEAT, FROZEN. South San Francisco, Calif., to New York, N. Y., for export, 1.

MILK:

Hartford, Conn., from Cloverdale and Middlesex, Vt., 237.

Illinois. Increase in rates, 92.

Indiana. Increase in rates, 337.

Louisiana. Increase in rates, 467.

Ohio. Increase in rates, 78.

MOLASSES, BLACKSTRAP. Meridian, Miss., from New Orleans, La., Mobile, Ala., and Gulfport, Miss., 549.

MULES. Wichita, Kans., to Arkansas, Louisiana, and Texas, and Memphis, Tenn., 536.

NAPHTHA, COAL-TAR. Ontario street station to Point Breeze station, Philadelphia, Pa., 506.

OIL, COTTONSEED. Carlisle, S. C., to Port Ivory, N. Y., 447.

OIL, CRUDE. Louisville, Ky., from Crichton and Shreveport, La., 105.

OIL, FISH. St. Marys, Ga., to Ohio and Mississippi river crossings, Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., and Baltimore, Md., 511.

OIL, FUEL:

Bone Valley district, Fla., from Tampa and Port Tampa, Fla., 726.

Florida. Increase in rates, 551 (554).

Louisville, Ky., from Crichton and Shreveport, La., 105.

OIL, GAS:

Cushing, Okla., to Neodesha, Kans., 110.

Iowa Park, Tex., to Acme, Okla., 659.

Louisville, Ky., from Crichton and Shreveport, La., 105.

OIL, KEROSENE. Electra and Brownwood, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export, 136.

OIL, LUBRICATING. Salt Lake City, Utah, to Cleveland, Ohio, 185.

OIL, PEANUT. Suffolk, Va., to Macon, Ga., 757.

OIL, PETROLEUM FUEL. Ponca City, Okla., to Hutchinson Station, Ill., 381.

OIL, PETROLEUM GAS. Lawrenceville, Ill., to Clayton, Miss., 433.

OIL, REFINED:

Cushing, Okla., to Vaughn, N. Mex., 379.

Florida. Increase in rates, 551 (554).

OIL, REFINED PETROLEUM. Salt Lake City, Utah, to Cleveland, Ohio, 185.

OLEOMARGARINE. Kansas City, Kans., to Los Angeles, Calif. Express rates, 663.

ORE:

Nevada. Increase in rates, 623.

Utah. Increase in rates, 353.

ORE, MANGANESE. Phillipsburg, Mont., to Wharton, N. J., and Johnstown, Pa., 499.

ORE, SILVER-LEAD. Utah. Increase in rates, 383.

PACKING HOUSE PRODUCTS. Canada to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn., 747.

PEBBLES, NATURAL STONE. Dewey, Okla., from Denver, Pueblo, Arvada, Mount Olivet, Wigginton, and Golden, Colo., 609.

PETROLEUM. Muskogee, Okla., from Warren, Pa., St. Marys, W. Va., and Chicago Heights, Ill., 255.

PETROLEUM, CRUDE:

Independence, Kans., from Plaquemine and New Orleans, La., 384.

Louisville, Ky., from Bowling Green, Ky., and Rugby Road, Tenn., 449.

PETROLEUM PRODUCTS. Muskogee, Okla., from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill., 255.

PIPE, CULVERT. Galion, Ohio, to Oklahoma, Kansas, and Nebraska, 515.

PIPE, SEWER. Westport, Mo., from various points, 278.

PIPE, WROUGHT IRON. Tiffin, Tex., from Cleveland and Kiefer, Okla., 263.

PLASTER:

Florida. Increase in rates, 551 (554).

Westport, Mo., from various points, 278.

PLUTO WATER. French Lick, Ind., to western classification territory, and between points in that territory, 615.

POMACE, APPLE. Watsonville, Calif., to St. Louis, Mo., 158.

POSTS, PTT. Newark, W. Va., to Benicoll, Pa., 159.

POTATOES:

Kindred, N. Dak., to Rockford, Ill., reconsigned to Princeton, Ill., 182.

Nebraska. Increase in rates, 305 (311).

POULTRY, LIVE. Official classification territory. Rating, 234.

PROPS, MINE. Newark, W. Va., to Benicoll, Pa., 159.

PULP, WET WOOD. Port Wentworth, Ga., to Bogalusa, La., 671.

RAILS, AUTOMOBILE GUARD. Milwaukee, Wis., to Richmond, Va., 761.

RAILS, OLD. Port Allegany, Pa., to Masten, Pa., 723.

RICE. Louisiana. Increase in rates, 467.

ROCK, CRUSHED. Trap Rock, Pa., to Carney's Point, N. J., 621.

ROCK, CRUSHED GYPSUM. Cape Girardeau, Mo., from Okeene and other Oklahoma points, 269.

RODS, WIRE. South San Francisco, Calif., from Harriet, N. Y., and Woodlawn, Pa., 258.

SAND:

Boonville, N. Y., to McKeever, N. Y., 725.

Florida. Increase in rates, 551 (554).

Louisiana. Increase in rates, 467.

Meridian, Miss., to and from Alabama. Rating, 5 (26).

Nebraska. Increase in rates, 305 (311).

South Carolina. Increase in rates, 290 (300).

SAND, SILICA:

Gulon, Ark., to Sapulpa, Okla., 737.

Imperial, W. Va., to Pennsboro, W. Va., 759.

Ottawa district, Ill., to Charlestown, W. Va., Cincinnati, Ohio, and other points east of Illinois-Indiana state line, 453.

SEEDS. Kansas City, Mo., from Lamar, Mo., and Middleton, Okla., 411.

SHELLS, MUSSEL. Bowling Green, Ky., to Memphis, Tenn., 431.

SHINGLES. Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 643.

SHOOKS, BOX. Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 643.

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SILOS, HOLLOW TILE. Meridian, Miss., to and from Alabama. Rating, 5 (26).
SIBUP, CORN. Chicago, Pekin, and Waukegan, Ill., Roby, Ind., and Clinton, Davenport, and Keokuk, Iowa, to Birmingham, Montgomery, and Dothan, Ala., 203.

SISAL. New Orleans, La., to Michigan City, Ind., 267.

SLATE, ROOFING. Granville and Middle Granville, N. Y., West Pawlet, Fair Haven, and Poulitney, Vt., to c. f. a. territory and other interstate destinations, 196.

SODA, CAUSTIC. St. Louis, Mo., Chicago, Ill., and other points to Tulsa, Sand Springs, Cushing, and Bristow, Okla., 750.

SODA, SILICATE OF. Rahway, N. J., to Port Ivory, Staten Island, N. Y., 613.

STEEL ARTICLES. Pacific coast ports from Chicago, Ill., and Terre Haute and Vincennes, Ind., 640.

STONE:

South Carolina. Increase in rates, 290 (300).

Westport, Mo., from various points, 278.

STONE, CRUSHED. New Braunfels, Tex., to De Ridder, La., 619.

STONE, ROUGH. Florida. Increase in rates, 551 (554).

STRAW:

Indiana. Increase in rates, 337 (343).

Westport, Mo., from various points, 278.

STRAWBOARD:

Indiana. Increase in rates, 337 (343).

Western trunk line territory, 191.

SUGAR. New Orleans, La., to Hospers, Iowa, and Alpena, S. Dak., 148.

SUGAR CANE. Louisiana. Increase in rates, 467.

SULPHUR. Louisiana and Texas to various destinations, 579.

SULPHUR, CRUDE:

Baltimore, Md., to Philadelphia, Pa., 221.

New York harbor to Philadelphia, Pa., and Paulsboro and Carney's Point, N. J., 221.

SWEETINGS, COTTON-FACTORY. South Carolina. Increase in rates, 290 (300).

TABLETS, PAPER. St. Joseph, Mo., to Wichita, Kans., 359.

TANKAGE, DRY. Curtis Bay, Md., to Pinners Point, Va., 377.

TIES, BAND-IRON Baling:

Chicago, Ill., to Oregon City, Oreg., 500.

Milwaukee, Wis., to Portland, Oreg., 500.

TILE, DRAIN. Westport, Mo., from various points, 278.

TILE, HOLLOW BUILDING:

Boone, Iowa. Storage, 418.

Meridian, Miss., to and from Alabama. Rating, 5 (24).

TILE, HOLLOW CLAY BUILDING. North Charleston Port Terminals, S. C., to Charleston, S. C., 149.

TILE, SILO. Meridian, Miss., to and from Alabama. Rating, 5 (24).

TIMBER. Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England, 648.

TOBACCO, LEAF. New York, N. Y., from San Francisco, Calif., Tacoma, Wash., and Vancouver, B. C., originating in China, 496.

TOBACCO, UNMANUFACTURED. New York, N. Y., from San Francisco, Calif., Tacoma, Wash., and Vancouver, B. C., originating in China, 496.

VEGETABLES. Florida. Packing requirements, 551 (553).

TABLE OF LOCALITIES.

(The numbers in parentheses following citations indicate where locality is considered.)

- Acme, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Acme, Okla., from Iowa Park, Tex. Gas oil, 659.
 Agatite, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Alabama to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. Lumber and products, 643.
 Alabama to and from Meridian, Miss. Class and commodity rates, 5.
 Alabama to Ohio River crossings and c. f. a. territory. Pig iron, 595.
 Albany, N. Y., from Jacksonville, Fla. Lumber and products, 643 (650).
 Alberta, Canada, to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn. Fresh meat and packing-house products, 747.
 Alexandria, La., from Wichita, Kans. Horses and mules, 536.
 Alexandria, Va., from Pennsylvania mines. Bituminous coal, 147.
 Alpena, S. Dak., from New Orleans, La. Sugar, 143.
 Altus, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Alva, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Archibald, La., to Newton, Miss. Cotton seed, 433.
 Arkansas from Mississippi and Missouri river crossings. Grain and products, 586.
 Arkansas to Westport, Mo. Class and commodity rates, 273.
 Arkansas from Wichita, Kans. Horses and mules, 536.
 Arkansas City, Ark., from Mississippi and Missouri river crossings. Grain and products, 586.
 Arlington, Staten Island, N. Y. Car spotting, 543.
 Arvada, Colo., to Dewey, Okla. Natural stone pebbles, 609.
 Ashtabula, Ohio, from Blytheville, Ark. Handle material, 85.
 Asylum, Tenn., from Grand Rapids, Mich. Gypsum hollow building blocks, 141.
 Atlanta, Ga., from Charlotte, N. C. Cotton seed, 231.
 Atlanta, Ga., from Kentucky and Tennessee mines, via Cartersville, Ga. Coal, 509.
 Atlanta, Ga., to La Grange, Ga. Sulphuric acid, 201.
 Atlanta, Ga., from Pageland, S. C. Cotton seed, 661.
 Atlanta, Ga., from Somerville, Tenn. Cotton seed, 505.
 Atlantic seaboard from various points. Storage in transit arrangements on apples, 333.
 Auburn, Me., from Wiergate, Tex., reconsigned at Little Falls, N. Y. Lumber, 718.
 Augusta, Ga., to and from points on Augusta Northern Railway. Class and commodity rates, 324.
 Augusta, Ga., from Charlotte, N. C. Cotton seed, 231.
 Augusta Northern Railway points to and from Augusta, Ga. Class and commodity rates, 324.
 60 I. C. C.

- Baltimore, Md., to Philadelphia, Pa. Crude sulphur, 221.
 Baltimore, Md., from St. Marys, Ga. Fish oil, 511.
 Baskin, La., to Newton, Miss. Cotton seed, 433.
 Baton Rouge, La. Loading and unloading, 397.
 Baton Rouge, La., from Kassel, La., originating at Electra and Brownwood, Tex., for export. Kerosene oil, 136.
 Baton Rouge, La., from Pacific coast. Imported copra, 357.
 Bauxite, Ark., from Brewer, Okla. Chestnut coal, 457.
 Beaumont, Tex., from Wichita, Kans. Horses and mules, 536.
 Bell, Pa., to Washington and Uniontown, D. C., and Alexandria, Va. Bituminous coal, 147.
 Bellaire, Ohio, to and from West Virginia. Passenger fares, 600.
 Belleville, Ill., to Missouri. Coal, 250.
 Belleville, Ill., to St. Louis, Mo. Passenger fares, 741.
 Belleville district, Ill., to Missouri. Coal, 250.
 Bellwood, Pa., from New York, N. Y. Locomotive parts, 423.
 Benham, Ky., from Universal, Pa. Cement, 439.
 Benicoll, Pa., from Newark, W. Va. Pit posts, 159.
 Benton, Ark., from Mississippi and Missouri river crossings. Grain and products, 586.
 Bickford, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Binghamton, N. Y., from Blytheville, Ark. Handle material, 85.
 Birmingham, Ala., from Chicago, Pekin, and Waukegan, Ill., Roby, Ind., and Clinton, Davenport, and Keokuk, Iowa. Corn sirup or glucose, 203.
 Blue Bill, Mich., to Menominee, Mich., and points in Wisconsin. Saw logs and bolts, 350.
 Blytheville, Ark., to Memphis, Tenn., Thebes, Ill., St. Louis, Mo., Fort Madison, Iowa, Fort Wayne, Ind., Jackson, Mich., Columbus, Ashtabula, and Geneva, Ohio, Binghamton, N. Y., and Philadelphia, Pa. Handle material, 85.
 Bogalusa, La., from Port Wentworth, Ga. Wet wood pulp, 671.
 Bone Valley district, Fla., from Tampa and Port Tampa, Fla. Fuel oil, 726.
 Boone, Iowa. Storage charges on hollow building tile, 418.
 Boonville, N. Y., to McKeesport, N. Y. Sand, 725.
 Boston, Mass., to and from Canada, via St. Paul, Minn. Fresh meat and packing-house products, 747.
 Boston, Mass., from Jacksonville, Fla. Lumber and products, 643 (650).
 Boston, Mass., from St. Marys, Ga. Fish oil, 511.
 Bowling Green, Ky., to Louisville, Ky. Crude petroleum, 449.
 Bowling Green, Ky., to Memphis, Tenn. Mussel shells, 431.
 Bowl's Spur, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
 Brackenridge, Pa. Car spotting, 575.
 Bradley, Ark., to Galveston, Tex., compressed in transit at Texarkana, Ark.-Tex., Longview or Marshall, Tex. Cotton, 633.
 Brewer, Okla., to Bauxite, Ark. Chestnut coal, 457.
 Brilliant, Ohio, to and from Ohio and West Virginia. Passenger fares, 600.
 Bristol, Okla., from St. Louis, Mo., Chicago, Ill., and other points. Caustic soda, 750.
 Britton's Spur, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
 Bronson, Ill., to Chicago, Milford, and Jamaica, Ill., originating at Missionfield, Ill. Bituminous coal, 633.

- Brownwood, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export. Kerosene oil, 136.
- Bryanmonnd, Tex.; to various destinations. Sulphur, 579.
- Buckner, Ark., to Galveston, Tex., compressed in transit at Texarkana, Ark.-Tex., Longview, or Marshall, Tex. Cotton, 666.
- Buffalo, N. Y., from Chicago, Ill., reshipped to Montrose, Pa. Live-stock feed, 155.
- Cairo, Ill., from Clarkton, Mo. Cotton seed, 139.
- Cairo, Ill., to and from Missouri. Class rates, 519.
- California to Salt Lake City and Ogden, Utah. Deciduous and citrus fruits, 783.
- Calvit, La., to Newton, Miss. Cotton seed, 433.
- Camden, N. J., from Macon, Ga. Lumber and products, 643 (648).
- Camp Logan (Houston), Tex., to Vicksburg, Miss., and New Orleans, La. Hair and wool press cloth, 414.
- Canada to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn. Fresh meat and packing-house products, 747.
- Canada from Johnson County, Ky. Bituminous coal, 763.
- Canada from Louisiana and Texas. Sulphur, 579.
- Cape Girardeau, Mo., from Okeene and other Oklahoma points. Crushed gypsum rock, 269.
- Carbon, Ind., to Boone, Iowa, reshipped to West Point, Iowa. Hollow building tile, 418.
- Carlisle, S. C., to Port Ivory, N. Y. Cottonseed oil, 447.
- Carney's Point, N. J., from New York harbor. Crude sulphur, 221.
- Carney's Point, N. J., from Trap Rock and Coatesville, Pa. Crushed rock, and ashes or cinders, 621.
- Carson (Riverton), Va. Switching charges on lime and limestone, 123.
- Cartersville, Ga., from Kentucky and Tennessee mines, destined to Atlanta, Ga. Coal, 509.
- Castle Gate group, Utah, to various destinations. Coal, 674.
- Cazenovia, N. Y. Storage on grain and products, 652.
- Cedar Rapids, Iowa, from Peoria, Ill. Chip board and strawboard, 191.
- Cement, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Central freight association territory from Alabama and Tennessee. Pig iron, 595.
- Central freight association territory from Granville and Middle Granville, N. Y., and West Pawlet, Fair Haven, and Poultney, Vt. Roofing slate, 196.
- Central freight association territory from Johnson County, Ky. Bituminous coal, 763.
- Central territory from Chicago, Ill. Lumber, 590.
- Central territory from Kentucky, Tennessee, and Virginia. Coal, 166.
- Channing, Mich., to Menominee, Mich., and Wisconsin. Saw logs and bolts, 350.
- Charleston, S. C., from North Charleston Port Terminals, S. C. Hollow clay building tile and cement, 149.
- Charlestown, W. Va., from Ottawa district, Ill. Silica sand, 453.
- Charlotte, N. C., to Augusta and Atlanta, Ga. Cotton seed, 281.
- Cheyenne, Wyo., to Salt Lake City, Utah. Green salted hides, 657.
- Chicago, Ill. Demurrage, 491.
- Chicago, Ill., to Birmingham, Montgomery, and Dothan, Ala. Corn sirup or glucose, 203.
- Chicago, Ill., to Buffalo, N. Y., reshipped to Montrose, Pa. Live-stock feed, 155.

- Chicago, Ill., to and from Canada via St. Paul, Minn. Fresh meat and packing-house products, 747.
- Chicago, Ill., to eastern trunk line and central territories. Lumber, 590.
- Chicago, Ill., to Kansas City, Mo.-Kans. Grain and products, 128.
- Chicago, Ill., from Missionfield, Ill., via Bronson, Ill. Bituminous coal, 688.
- Chicago, Ill., from Natchez, Miss., and Vidalia, La. Class and commodity rates, 276.
- Chicago, Ill., to Omaha, Nebr., Kansas City and St. Joseph, Mo., and Des Moines, Iowa. Chip board and strawboard, 191.
- Chicago, Ill., to Oregon City, Ore. Band-iron baling ties, 500.
- Chicago, Ill., to Pacific coast ports. Iron and steel articles, 640.
- Chicago, Ill., from San Francisco, Calif., and Tacoma and Seattle, Wash., imported from Japan and China. Straw braid and chip braid, 272.
- Chicago, Ill., to Tulsa, Sand Springs, Cushing, and Bristow, Okla. Caustic soda, 750.
- Chicago Heights, Ill., to Muskogee, Okla. Petroleum and products, 255.
- Cincinnati, Ohio, from Hillsboro, Ill. Acid, 583.
- Cincinnati, Ohio, from Ottawa district, Ill. Silica sand, 453.
- Cincinnati, Ohio, from St. Marys, Ga. Fish oil, 511.
- Clarkton, Mo., to Cairo, Ill. Cotton seed, 139.
- Clayton, Miss., from Lawrenceville, Ill. Petroleum gas oil, 438.
- Cleveland, Ohio, from Salt Lake City, Utah. Refined petroleum oil, 185.
- Cleveland, Ohio, to Tulsa, Okla. Caustic soda, 750.
- Cleveland, Okla., to Tiffin, Tex. Wrought-iron pipe, 263.
- Clinton, Iowa, to Birmingham, Montgomery, and Dothan, Ala. Corn sirup or glucose, 203.
- Cloverdale, Vt., to Hartford, Conn. Milk and cream, 237.
- Coatesville, Pa., to Carney's Point, N. J. Ashes or cinders, 621.
- Coeur d'Alene, Idaho. Switching charges on lumber and articles, 275.
- Coffeyville, Kans., to Eldorado, Kans. Sulphuric acid, 125.
- Collinston, La., to Newton, Miss. Cotton seed, 433.
- Columbus, Ohio, from Blytheville, Ark. Handle material, 85.
- Columbus, Ohio, from Edgar, Fla., reconsigned to East Palestine, Ohio. Kaolin clay, 372.
- Coulterville, Ill., to Illinois and Missouri. Bituminous coal, 52.
- Coulterville, Ill., to Missouri. Coal, 250.
- Creta, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Orichton, La., to Louisville, Ky. Crude, fuel, and gas oils, 105.
- Curtis Bay, Md., to Pinners Point, Va. Dry tankage, 377.
- Cushing, Okla., to Neodesha, Kans. Gas oil, 110.
- Cushing, Okla., from St. Louis, Mo., Chicago, Ill., and other points. Caustic soda, 750.
- Cushing, Okla., to Vaughn, N. Mex. Kerosene, 879.
- Dallas, Tex., from Seattle and Tacoma, Wash. Copra, 465.
- Damon, Tex., to various destinations. Sulphur, 579.
- Danville, Ill., to Hoopston, Ill. Sulphuric acid, 720.
- Darrow, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Davenport, Iowa, to Birmingham, Montgomery, and Dothan, Ala. Corn sirup or glucose, 203.
- Delaware from Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama. Lumber and products, 643.
- Delray, Mich., to Sand Springs, Okla. Caustic soda, 750.
- Denver, Colo., to Deway, Okla. Natural stone pebbles, 602.

- De Ridder, La., from New Braunfels, Tex. Crushed stone, 619.
- Des Moines, Iowa, from Chicago, Ill. Chip board and strawboard, 191.
- Des Moines, Iowa, from Minneapolis, St. Paul, and Duluth, Minn. Flaxseed, 408.
- Detroit, Mich., to Flint, Mich. Automobile tire carriers, 669.
- Detroit, Mich., to Tulsa and Sand Springs, Okla. Caustic soda, 750.
- Dewey, Okla., from Denver, Pueblo, Arvada, Mount Olivet, Wiggington, and Golden, Colo. Natural stone pebbles, 609.
- Dorchester, Wis., from Long Lake, Wis. Lumber, 265.
- Dothan, Ala., from Chicago, Pekin, and Waukegan, Ill., Bohy, Ind., and Clinton, Davenport, and Keokuk, Iowa. Corn sirup or glucose, 203.
- Dover, Ohio, from Sugar Creek, Ohio. Bituminous coal, 499.
- Dubuque, Iowa, from Eau Claire, Wis. Chip board and strawboard, 191.
- Duluth, Minn., to Des Moines, Iowa. Flaxseed, 408.
- Duluth, Minn., to Minnesota, North Dakota, and South Dakota. Coal, 687.
- East Boston, Mass., to Ludlow Junction, Mass. Jute and jute butts, 441.
- Eastern trunk line territory from Chicago, Ill. Lumber, 590.
- East Hiawatha, Utah, to various destinations. Coal, 674.
- East Palestine, Ohio, from Edgar, Fla., reconsigned at Columbus, Ohio. Kaolin clay, 372.
- East St. Louis, Ill., to St. Louis, Mo. Passenger fares, 741.
- East St. Louis, Ill., from St. Marys, Ga. Fish oil, 511.
- Eau Claire, Wis., to Dubuque, Iowa. Chip board and strawboard, 191.
- Edgar, Fla., to Columbus, Ohio, reconsigned to East Palestine, Ohio. Kaolin clay, 372.
- Edmonton, Canada, to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn. Fresh meat and packing-house products, 747.
- Eldorado, Kans., from Coffeyville, Kans. Sulphuric acid, 125.
- Electra, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export. Kerosene oil, 136.
- El Paso, Tex., from Fillmore, Calif. Lemons, 455.
- Eudora, Ark., from Mississippi and Missouri river crossings. Grain and products, 586.
- Evansville, Ind., from Hillsboro, Ill. Acid, 583.
- Evansville, Ind., from St. Marys, Ga. Fish oil, 511.
- Fair Haven, Vt., to c. f. a. territory and other interstate destinations. Roofing slate, 196.
- Fairport Harbor, Ohio, to Sand Springs, Okla. Caustic soda, 750.
- Fillmore, Calif., to El Paso, Tex. Lemons, 455.
- Flint, Mich., from Detroit, Mich. Automobile tire carriers, 669.
- Florida. Increase in rates, fares, and charges, 551.
- Florida to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. Lumber and products, 643.
- Fort Dodge, Iowa, to Minnesota, South Dakota, and North Dakota. Glass rates, 224.
- Fort Madison, Iowa, from Blytheville, Ark. Handle material, 85.
- Fort Wayne, Ind., from Blytheville, Ark. Handle material, 85.
- Frankfort, Ky., from Huntington, W. Va. Glass bottles, 495.
- Frankfort, N. Y., from Jacksonville, Fla. Lumber and products, 643 (650).
- Fresport, Tex., to various destinations. Sulphur, 579.
- French Lick, Ind., to western classification territory. Pluto water, 615.
- Gallion, Ohio, to Oklahoma, Kansas, and Nebraska. Cast-iron culverts or culvert pipe, 515.

- Galveston, Tex., from Bradley, Buckner, and Waldo, Ark., compressed in transit at Texarkana, Ark.-Tex., Longview or Marshall, Tex. Cotton, 636.
- Geneva, Ohio, from Blytheville, Ark. Handle material, 85.
- Georgia. Increase in rates, fares, and charges, 527.
- Georgia to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. Lumber and products, 643.
- Gilbert, La., to Newton, Miss. Cotton seed, 433.
- Gladys, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Golden, Colo., to Dewey, Okla. Natural stone pebbles, 609.
- Grand Rapids, Mich. Switching, 564.
- Grand Rapids, Mich., to Asylum, Tenn. Gypsum hollow building blocks, 141.
- Grand Rapids, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
- Grantsville, Md. Car distribution; coal, 232.
- Granville, N. Y., to c. f. a. territory and other interstate destinations. Roofing slate, 196.
- Gray, Pa., to Washington and Uniontown, D. C., and Alexandria, Va. Bituminous coal, 147.
- Great Falls, Mont., to Milwaukee, Wis. Barley malt, 114.
- Green Bay, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
- Guion, Ark., to Sapulpa, Okla. Silica sand, 737.
- Gulf Hill, Tex., to various destinations. Sulphur, 579.
- Gulfport, Miss., to Meridian, Miss. Blackstrap molasses, 549.
- Harlem River, N. Y., from Jacksonville, Fla. Lumber and products, 643 (650).
- Harriet, N. Y., to South San Francisco, Calif. Wire rods, 258.
- Hartford, Conn., from Cloverdale and Middlesex, Vt. Milk and cream, 237.
- Hartford, Conn., from Wiergate, Tex., reconsigned at Little Falls, N. Y. Lumber, 718.
- Helena, Ark., from Wichita, Kans. Horses and mules, 536.
- Hiawatha, Utah, to various destinations. Coal, 674.
- Higginsville, Mo., to Missouri and Kansas. Coal, 715.
- Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind. Acid, 583.
- Hoopeston, Ill., from Danville, Ill. Sulphuric acid, 720.
- Hospers, Iowa, from New Orleans, La. Sugar, 143.
- Houston, Tex., to Vicksburg, Miss., and New Orleans, La. Hair and wool press cloth, 414.
- Hubbell's Mill, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
- Huntington, W. Va., to Midway and Frankfort, Ky. Glass bottles, 495.
- Hutchinson Station, Ill., from Ponca City, Okla. Petroleum fuel oil, 381.
- Iberville, Quebec, from San Francisco, Calif., and Tacoma and Seattle, Wash., imported from Japan and China. Straw braid and chip braid, 272.
- Ideal, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Illinois. Increase in rates, fares, and charges, 92.
- Illinois from Coulterville, Ill. Bituminous coal, 52.
- Illinois to Indianapolis, Ind. Cattle and hogs, 67.
- Illinois to Kansas City, Mo.-Kans. Grain and products, 123.
- Illinois from Kentucky, Tennessee, and Virginia. Coal, 166.
- Imperial, W. Va., to Pennsboro, W. Va. Silica sand, 759.
- Independence, Kans., from Plaquemine and New Orleans, La. Crude petroleum, 384.
- Indiana. Increased rates, fares, and charges, 337.

- Indiana-Illinois state line, points east of, from Ottawa district, Ill. Silica sand, 453.
- Indianapolis, Ind., from Illinois. Cattle and hogs, 67.
- Iowa. Increase in rates, fares, and charges, 55.
- Iowa to Kansas City, Mo.-Kans. Grain and products, 123.
- Iowa from Kentucky, Tennessee, and Virginia. Coal, 166.
- Iowa Park, Tex., to Acme, Okla. Gas oil, 659.
- Iowa Park, Tex., to Westwego, La., for export. Gasoline, 655.
- Jackson, Mich., from Blytheville, Ark. Handle material, 85.
- Jacksonville, Fla., to New York and New England. Lumber and products, 643 (650).
- Jamaica, Ill., from Missionfield, Ill., via Bronson, Ill. Bituminous coal, 683.
- Jeffersonville, Ind., from Hillsboro, Ill. Acid, 583.
- Jeffersonville, Ind., from Kentucky, Tennessee, and Virginia. Coal, 166.
- Jersey City, N. J. Storage on flour, 151.
- Johnson county, Ky., to c. f. a. and western classification territories and Canada. Bituminous coal, 763.
- Johnstown, Pa., from Phillipsburg, Mont. Manganese ore, 459.
- Kanawha district, W. Va., to Massillon, Ohio. Bituminous coal, 443.
- Kansas from Gallon, Ohio. Cast iron culverts or culvert pipe, 515.
- Kansas from Higginsville, Mo. Coal, 715.
- Kansas to Westport, Mo. Class and commodity rates, 278.
- Kansas City, Kans., to Los Angeles, Calif. Express rates on oleomargarine, 663.
- Kansas City, Mo., to Arkansas. Grain and products, 586.
- Kansas City, Mo., from Chicago, Ill. Chip board and strawboard, 191.
- Kansas City, Mo., from Lamar, Mo., and Middleton, Okla. Seeds, 411.
- Kansas City, Mo.-Kans., from St. Louis and other Missouri points, Peoria, Chicago, and other Illinois points, St. Paul and other Minnesota points, Wisconsin, Iowa, and Michigan. Grain and products, 123.
- Kassel, La., from Electra and Brownwood, Tex., reshipped to Baton Rouge, La., for export. Kerosene oil, 186.
- Kennydale, Wash., from Wilkeson, Wash. Logs, 162.
- Kentucky mines to Atlanta, Ga., via Cartersville, Ga. Coal, 509.
- Kentucky mines to c. f. a. and western classification territories. Bituminous coal, 763.
- Kentucky mines to central territory, Illinois, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Coal, 166.
- Keokuk, Iowa, to Birmingham, Montgomery, and Dothan, Ala. Corn sirup or glucose, 203.
- Kiefer, Okla., to Tiffin, Tex. Wrought-iron pipe, 263.
- Kiel, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
- Kimberly, Wis., to Tulsa, Okla. Caustic soda, 750.
- Kindred, N. Dak., to Rockford, Ill., reconsigned to Princeton, Ill. Potatoes, 182.
- Kingston, Pa., to New York Lighterage station, N. J. Anthracite coal, 133.
- La Grange, Ga., from Atlanta, Ga. Sulphuric acid, 201.
- Lake Charles, La., from Wichita, Kans. Horses and mules, 536.
- Lamar, Mo., to Kansas City, Mo. Seeds, 411.
- Lancaster, Pa., to Washington, D. C. Ice, 145.
- Lawrenceville, Ill., to Clayton, Miss. Petroleum gas oil, 433.
- Little Falls, N. Y., from Wiergate, Tex., reconsigned to Auburn, Me., and Hartford and Thomaston, Conn. Lumber, 713.
- 60 I. C. C.

- Little Rock, Ark., from Wichita, Kans. Horses and mules, 536.
 Live Oak, Fla., to New York, N. Y. Lumber and products, 648 (648).
 Long Lake, Wis., to Dorchester, Wis. Lumber, 265.
 Longview, Tex., from Bradley, Buckner, and Waldo, Ark., compressed and shipped to Galveston, Tex. Cotton, 666.
 Los Angeles, Calif., from Kansas City, Kans. Oleomargarine; express rates, 663.
 Los Angeles, Calif., from Milwaukee, Wis. Steel channels, 179.
 Louisiana. Increase in rates, fares, and charges, 497.
 Louisiana from Mobile, Ala. Fertilizer, 321.
 Louisiana to Newton, Miss. Cotton seed, 433.
 Louisiana to various destinations. Sulphur, 579.
 Louisiana to Westport, Mo. Class and commodity rates, 273.
 Louisiana from Wichita, Kans. Horses and mules, 536.
 Louisville, Ky., from Bowling Green, Ky., and Rugby Road, Tenn. Crude petroleum, 449.
 Louisville, Ky., from Crichton and Shreveport, La. Crude, fuel, and gas oils, 105.
 Louisville, Ky., from St. Marys, Ga. Fish oil, 511.
 Ludlow Junction, Mass., from East Boston, Mass. Jute and jute butts, 441.
 Luzerne, Pa., to New York Lighterage station, N. J. Anthracite coal, 183.
 McKeever, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
 McKeever, N. Y., from Boonville, N. Y. Sand, 725.
 Macon, Ga., to Camden, N. J. Lumber and products, 648 (648).
 Macon, Ga., from Suffolk, Va. Peanut oil, 757.
 Mangham, La., to Newton, Miss. Cotton seed, 433.
 Manitoba, Canada, to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn. Fresh meat and packing-house products, 747.
 Marinette, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
 Marshall, Tex., from Bradley, Buckner, and Waldo, Ark., compressed and shipped to Galveston, Tex. Cotton, 666.
 Martin's Ferry, Ohio, to and from Ohio and West Virginia. Passenger fares, 600.
 Maryland from Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama. Lumber and products, 648.
 Mass, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
 Massillon, Ohio, from Kanawha district, W. Va. Bituminous coal, 443.
 Masten, Pa., from Port Allegany, Pa. Old rails, 723.
 Maybrook, N. Y. Demurrage on lumber, 789.
 Memphis, Tenn., from Blytheville, Ark. Handle material, 35.
 Memphis, Tenn., from Bowling Green, Ky. Mussel shells, 431.
 Memphis, Tenn., from St. Marys, Ga. Fish oil, 511.
 Memphis, Tenn., from Wichita, Kans. Horses and mules, 536.
 Menasha, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
 Menominee, Mich., from Wisconsin and Michigan. Saw logs and bolts, 350.
 Meridian, Miss., to and from Alabama. Class and commodity rates, 5.
 Meridian, Miss., from New Orleans, La., Mobile, Ala., and Gulfport, Miss. Blackstrap molasses, 549.
 Merrie, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
 Mer Rouge, La., to Newton, Miss. Cotton seed, 433.

- Michigan. Passenger fares, 245.
- Michigan to Kansas City, Mo.-Kans. Grain and products, 128.
- Michigan to Menominee, Mich., and Wisconsin. Saw logs and bolts, 350.
- Michigan City, Ind., from New Orleans, La. Sisal, 267.
- Middle Granville, N. Y., to c. f. a. territory and other interstate destinations.
- Roofing slate, 196.
- Middlesex, Vt., to Hartford, Conn. Milk and cream, 237.
- Middleton, Okla., to Kansas City, Mo. Seeds, 411.
- Midland, Pa., from Union Stone Company, Pa. Crude dolomite, 503.
- Midway, Ky., from Huntington, W. Va. Glass bottles, 495.
- Milford, Ill., from Missionfield, Ill., via Bronson, Ill. Bituminous coal, 683.
- Millersburg, Pa., to Manhattan piers, Jersey City, N. J. Flour, 151.
- Milwaukee, Wis., from Great Falls, Mont. Barley malt, 114.
- Milwaukee, Wis., to Los Angeles, Calif. Steel channels, 179.
- Milwaukee, Wis., from Natchez, Miss., and Vidalia, La. Class and commodity rates, 276.
- Milwaukee, Wis., to Portland, Oreg. Band-iron baling ties, 500.
- Milwaukee, Wis., to Richmond, Va. Automobile guard rails, 761.
- Minneapolis, Minn. Demurrage charges on flour and grain products, 157.
- Minneapolis, Minn., to Des Moines, Iowa. Flaxseed, 403.
- Minnesota from Duluth, Minn., Superior, Wis., and other points at the head of the lakes. Coal, 687.
- Minnesota from Fort Dodge, Iowa. Class rates, 224.
- Minnesota to Kansas City, Mo.-Kans. Grain and products, 128.
- Minnesota from Kentucky, Tennessee, and Virginia. Coal, 166.
- Missionfield, Ill., to Chicago, Milford, and Jamaica, Ill., via Bronson, Ill. Bituminous coal, 683.
- Mississippi River crossings to Arkansas. Grain and products, 586.
- Mississippi River crossings from St. Marys, Ga. Fish oil, 511.
- Missouri from Belleville district, Ill. Coal, 250.
- Missouri to and from Cairo, Ill. Class rates, 518.
- Missouri from Coulterville, Ill. Bituminous coal, 52.
- Missouri from Higginsville, Mo. Coal, 715.
- Missouri to Kansas City, Mo.-Kans. Grain and products, 128.
- Missouri from Kentucky, Tennessee, and Virginia. Coal, 166.
- Missouri mines to Missouri and Kansas. Coal, 715.
- Missouri River crossings to Arkansas. Grain and products, 586.
- Mobile, Ala., to Louisiana. Fertilizer, 321.
- Mobile, Ala., to Meridian, Miss. Blackstrap molasses, 549.
- Mohrland, Utah, to various destinations. Coal, 674.
- Monroe, La. Switching charges, 120.
- Montana. Increase in rates, fares, and charges, 61.
- Montgomery, Ala., from Chicago, Pekin, and Waukegan, Ill., Roby, Ind., and Clinton, Davenport, and Keokuk, Iowa. Corn sirup or glucose, 208.
- Montrose, Pa., from Buffalo, N. Y., originating at Chicago, Ill. Live stock feed, 155.
- Mossville, La., to various destinations. Sulphur, 579.
- Mount Hood Railroad points in Oregon. Demurrage charges, 116.
- Mount Olivet, Colo., to Dewey, Okla. Natural stone pebbles, 609.
- Muskogee, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- Muskogee, Okla., from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill. Petroleum and products, 235.
- Natchez, Miss. Loading and unloading, 397.

- Natchez, Miss., to Chicago, Peoria, and Springfield, Ill., and Milwaukee, Wis.
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- Nebraska. Increase in rates, fares, and charges, 305.
- Nebraska from Gallon, Ohio. Cast-iron culverts or culvert pipe, 515.
- Nebraska from Kentucky, Tennessee, and Virginia. Coal, 166.
- Neodesha, Kans., from Cushing, Okla. Gas oil, 110.
- Nevada. Increase in rates, fares, and charges, 623.
- New Albany, Ind., from Kentucky, Tennessee, and Virginia. Coal, 166.
- Newark, W. Va., to Benicoll, Pa. Pit posts, 159.
- New Braunfels, Tex., to De Ridder, La. Crushed stone, 619.
- New Brunswick, N. J., from Waycross, Ga. Lumber and products, 643 (648).
- Newburyport, Mass., from Standard, La., reconsigned at Maybrook, N. Y.
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- New England from Virginia, North Carolina, South Carolina, Georgia, Florida,
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- New Haven, Conn., from Jacksonville, Fla. Lumber and products, 643 (650).
- New Jersey from Virginia, North Carolina, South Carolina, Georgia, Florida,
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- New Orleans, La., to Hesper, Iowa, and Alpena, S. Dak. Sugar, 143.
- New Orleans, La., from Houston and Camp Logan (Houston), Tex. Hair and
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- New Orleans, La., to Independence, Kans. Crude petroleum, 334.
- New Orleans, La., to Meridian, Miss. Blackstrap molasses, 540.
- New Orleans, La., to Michigan City, Ind. Sisal, 267.
- New Orleans, La., to Orange, Tex. Sulphuric acid, 451.
- New Orleans, La., from Pacific coast. Imported copra, 357.
- Newton, Miss., from Louisiana. Cotton seed, 433.
- New York from Virginia, North Carolina, South Carolina, Georgia, Florida,
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- New York, N. Y., to Bellwood, Pa. Locomotive parts, 423.
- New York, N. Y., to and from Canada, via St. Paul, Minn. Fresh meat and
packing-house products, 747.
- New York, N. Y., from Live Oaks and Jacksonville, Fla. Lumber and products,
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- New York, N. Y., from St. Marys, Ga. Fish oil, 511.
- New York, N. Y., from San Francisco, Calif., and Tacoma and Seattle, Wash.,
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- New York, N. Y., from San Francisco, Calif., Tacoma, Wash., and Vancouver,
British Columbia, originating in China. Tobacco, 486.
- New York, N. Y., from South San Francisco, Calif. Frozen meat, 1.
- New York harbor to Philadelphia, Pa., and Paulsboro and Carney's Point, N. J.
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- North Carolina to Maryland, Delaware, Pennsylvania, New Jersey, New York,
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- North Charleston Port Terminals, S. C., to Charleston, S. C. Hollow clay
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- North Dakota from Duluth, Minn., Superior, Wis., and other points at the head
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- North Dakota from Fort Dodge, Iowa. Glass rates, 224.
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- Philadelphia, Pa., from St. Marys, Ga. Fish oil, 511.
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 Pueblo, Colo., to Dewey, Okla. Natural stone pebbles, 609.
 Rahway, N. J., to Port Ivory, Staten Island, N. Y. Silicate of soda, 613.
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 Rockford, Del., from Paulsboro, N. J. Sulphuric acid, 243.
 Rockford, Ill. Reconsignment of coal, 217.
 Rockford, Ill., from Kindred, N. Dak., reconsigned to Princeton, Ill. Potatoes, 182.
 Roman Nose, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
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 St. Joseph, Mo., from Chicago, Ill. Chip board and strawboard, 191.
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 St. Louis, Mo., to Arkansas. Grain and products, 586.
 St. Louis, Mo., from Belleville and East St. Louis, Ill. Passenger fares, 741.
 St. Louis, Mo., from Blytheville, Ark. Handle material, 85.
 St. Louis, Mo., to Kansas City, Mo.-Kans. Grain and products, 123.
 St. Louis, Mo., from Kentucky, Tennessee, and Virginia. Coal, 166.
 St. Louis, Mo., to Omaha, Nebr., and Sioux City, Iowa. Chip board and strawboard, 191.
 St. Louis, Mo., from St. Marys, Ga. Fish oil, 511.

- St. Louis, Mo., to Tulsa, Sand Springs, Cushing, and Bristow, Okla. Caustic soda, 750.
- St. Louis, Mo., from Watsonville, Calif. Apple pomace, 153.
- St. Marys, Ga., to Ohio and Mississippi river crossings, Boston, Mass., Providence, R. I., New York, N. Y., Philadelphia, Pa., and Baltimore, Md. Fish oil, 511.
- St. Mary's, W. Va., to Muskogee, Okla. Petroleum and products, 255.
- St. Paul, Minn., to Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., originating in Canada. Fresh meat and packing-house products, 747.
- St. Paul, Minn., to Des Moines, Iowa. Flaxseed, 403.
- St. Paul, Minn., to Kansas City, Mo.-Kans. Grain and products, 123.
- St. Paul, Minn., to Omaha, Nebr., and Sioux City, Iowa. Chip board and strawboard, 191.
- Salt Lake City, Utah, from California. Deciduous and citrus fruits, 733.
- Salt Lake City, Utah, from Cheyenne, Wyo. Green salted hides, 657.
- Salt Lake City, Utah, to Cleveland, Ohio. Refined petroleum oil, 185.
- Saltville, Va., to Tulsa, Okla. Caustic soda, 750.
- Sand Springs, Okla., from St. Louis, Mo., Chicago, Ill., and other points. Caustic soda, 750.
- San Francisco, Calif., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, imported from Japan and China. Straw braid and chip braid, 272.
- San Francisco, Calif., to New Orleans and Baton Rouge, La. Imported copra, 357.
- San Francisco, Calif., to New York, N. Y., originating in China. Tobacco, 486.
- Sapulpa, Okla., from Gilson, Ark. Silica sand, 737.
- Savannah, Ga., to Philadelphia, Pa. Lumber and products, 643 (643).
- Schofield, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
- Seattle, Wash., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, imported from Japan and China. Straw braid and chip braid, 272.
- Seattle, Wash., to Dallas, Tex. Copra, 485.
- Seattle, Wash., to New Orleans and Baton Rouge, La. Imported copra, 357.
- Shopleire, Wis., from Nokomis, Ill. Bituminous coal, 190.
- Shreveport, La., to Louisville, Ky. Crude, fuel, and gas oils, 105.
- Shreveport, La., to and from Texas. Grain and products, 313.
- Shreveport, La., from Wichita, Kans. Horses and mules, 536.
- Sioux City, Iowa, from St. Paul, Minn., and St. Louis, Mo. Chip board and strawboard, 191.
- Somerville, Tenn., to Atlanta, Ga. Cotton seed, 505.
- Southard, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
- South Carolina. Increase in rates, fares, and charges, 290.
- South Carolina to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. Lumber and products, 643.
- South Charleston, W. Va., to Tulsa, Okla. Caustic soda, 750.
- South Dakota from Duluth, Minn., Superior, Wis., and other points at the head of the lakes. Coal, 687.
- South Dakota from Fort Dodge, Iowa. Class rates, 224.
- South Dakota from Kentucky, Tennessee, and Virginia. Coal, 166.
- South Omaha, Nebr., to and from Canada, via St. Paul, Minn. Fresh meat and packing-house products, 747.

- South San Francisco, Calif., from Harriet, N. Y., and Woodlawn, Pa. Wire rods, 258.
- South San Francisco, Calif., to New York, N. Y. Frozen meat, 1.
- Sparta, Ill., to Missouri. Coal, 250.
- Springfield, Ill., from Natchez, Miss., and Vidalia, La. Class and commodity rates, 276.
- Standard, La., to Maybrook, N. Y., reconsigned to Newburyport, Mass. Lumber, 739.
- Steubenville, Ohio, to and from West Virginia. Passenger fares, 600.
- Suffolk, Va., to Macon, Ga. Peanut oil, 737.
- Sugar Creek, Ohio, to Dover (Parra), Ohio. Bituminous coal, 499.
- Sulphur Mine, La., to various destinations. Sulphur, 579.
- Superior, Wis., to Minnesota, North Dakota, and South Dakota. Coal, 667.
- Tacoma, Wash., to Chicago, Ill., New York, N. Y., St. Johns and Iberville, Quebec, and Toronto, Ontario, imported from Japan and China. Straw braid and chip braid, 272.
- Tacoma, Wash., to Dallas, Tex. Copra, 465.
- Tacoma, Wash., to New Orleans and Baton Rouge, La. Imported copra, 357.
- Tacoma, Wash., to New York, N. Y., originating in China. Tobacco, 486.
- Tacoma, Wash., from Wilkeson, Wash. Logs, 162.
- Tampa, Fla., to Bone Valley district, Fla. Fuel oil, 726.
- Tennessee to central territory, Illinois, Iowa, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Coal, 166.
- Tennessee to Ohio River crossings and c. f. a. territory. Pig iron, 595.
- Tennessee mines to Atlanta, Ga., via Cartersville, Ga. Coal, 509.
- Terre Haute, Ind., to Pacific coast ports. Iron and steel articles, 640.
- Texarkana, Ark.-Tex., from Bradley, Buckner, and Waldo, Ark., compressed and shipped to Galveston, Tex. Cotton, 666.
- Texarkana, Ark.-Tex., from Wichita, Kans. Horses and mules, 536.
- Texas. Increase in rates, fares, and charges, 421.
- Texas to and from Texas and Shreveport, La. Grain and products, 318.
- Texas to various destinations. Sulphur, 579.
- Texas to Westport, Mo. Class and commodity rates, 278.
- Texas from Wichita, Kans. Horses and mules, 536.
- Thebes, Ill., from Blytheville, Ark. Handle material, 85.
- Thomaston, Conn., from Wiergate, Tex., reconsigned at Little Falls, N. Y. Lumber, 718.
- Tiffin, Tex., from Cleveland and Kiefer, Okla. Wrought-iron pipe, 263.
- Tolfree, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
- Toronto, Ontario, from San Francisco, Calif., and Tacoma and Seattle, Wash., imported from Japan and China. Straw braid and chip braid, 272.
- Trap Rock, Pa., to Carney's Point, N. J. Crushed rock, 621.
- Tulsa, Okla., from St. Louis, Mo., Chicago, Ill., and other points. Caustic soda, 750.
- Union Grove, Wis., from Nokomis, Ill. Bituminous coal, 214.
- Union Stone Company, Pa., to Midland, Pa. Crude dolomite, 503.
- Uniontown, D. C., from Pennsylvania mines. Bituminous coal, 147.
- Universal, Pa., to Benham, Ky. Cement, 489.
- Utah. Increase in rates, fares, and charges, 388.
- Utah mines to various destinations. Coal, 674.
- Vancouver, British Columbia, to New York, N. Y., originating in China. Tobacco, 486.

- Vaughn, N. Mex., from Cushing, Okla. Kerosene, 379.
 Vicksburg, Miss. Loading and unloading, 397.
 Vicksburg, Miss., from Houston and Camp Logan (Houston), Tex. Hair and wool press cloth, 414.
 Vidalia, La., to Chicago, Peoria, and Springfield, Ill., and Milwaukee, Wis. Class and commodity rates, 276.
 Vincennes, Ind., to Pacific coast ports. Iron and steel articles, 640.
 Virginia to Maryland, Delaware, Pennsylvania, New Jersey, New York, and New England. Lumber and products, 643.
 Virginia mines to central territory, Illinois, Iowa, Minnesota, Missouri, South Dakota, and Wisconsin. Coal, 166.
 Waldo, Ark., to Galveston, Tex., compressed in transit at Texarkana, Ark.-Tex., Longview or Marshall, Tex. Cotton, 666.
 Warren, Pa., to Muskogee, Okla. Petroleum and products, 255.
 Wasas Siding, Mich., to Marinette, Wis., and Menominee, Mich. Saw logs and bolts, 350.
 Washington, D. C., from Lancaster, Pa. Ice, 145.
 Washington, D. C., from Pennsylvania mines. Bituminous coal, 147.
 Watonga, Okla., to Cape Girardeau, Mo. Crushed gypsum rock, 269 (271).
 Watsonville, Calif., to St. Louis, Mo. Apple pomace, 153.
 Waukegan, Ill., to Birmingham, Montgomery, and Dothan, Ala. Corn sirup or glucose, 203.
 Wausau, Wis., from Michigan and Wisconsin. Saw logs and bolts, 350.
 Waycross, Ga., to New Brunswick, N. J. Lumber and products, 643 (648).
 Wellsburg, W. Va., to and from Ohio. Passenger fares, 600.
 West Economy, Pa. Switching, 325.
 Western classification territory. Pluto water; rating, 615.
 Western classification territory from French Lick, Ind. Pluto water, 615.
 Western classification territory from Johnson county, Ky. Bituminous coal, 763.
 Western trunk line territory. Chip board and strawboard, 191.
 West Hammond, Ind. Switching, 523.
 West Pawlet, Vt., to c. f. a. territory and other interstate destinations. Roofing slate, 196.
 West Point, Iowa, from Boone, Iowa, originating at Carbon, Ind. Hollow building tile, 418.
 Westport, Mo., from various points. Class and commodity rates, 278.
 West Virginia to and from Ohio. Passenger fares, 600.
 West Virginia mines. Car distribution; coal, 315, 569.
 Westwego, La., from Iowa Park, Tex., for export. Gasoline, 655.
 Wharton, N. J., from Phillipsburg, Mont. Manganese ore, 459.
 Wheeling, W. Va., to and from Ohio. Passenger fares, 600.
 Wichita, Kans., to Arkansas, Louisiana, and Texas, and Memphis, Tenn. Horses and mules, 536.
 Wichita, Kans., from St. Joseph, Mo. Paper tablets, 359.
 Wiergate, Tex., to Little Falls, N. Y., reconsigned to Auburn, Me., and Hartford and Thomaston, Conn. Lumber, 718.
 Wierton, W. Va., to and from Ohio. Passenger fares, 600.
 Wiggington, Colo., to Dewey, Okla. Natural stone pebbles, 609.
 Wilkeson, Wash., to Tacoma and Kenndydale, Wash. Logs, 162.
 Winnipeg, Canada, to and from Chicago, Ill., South Omaha, Nebr., New York, N. Y., and Boston, Mass., via St. Paul, Minn. Fresh meat and packing-house products, 747.
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Winnsboro, La., to Newton, Miss. Cotton seed, 433.
Wisconsin to Kansas City, Mo.-Kans. Grain and products, 123.
Wisconsin from Kentucky, Tennessee, and Virginia. Coal, 166.
Wisconsin to Menominee, Mich., and Wisconsin. Saw logs and bolts, 350.
Wisconsin from Michigan and Wisconsin. Saw logs and bolts, 350.
Wisner, La., to Newton, Miss. Cotton seed, 433.
Woodlawn, Pa. Switching, 325.
Woodlawn, Pa., to South San Francisco, Calif. Wire rods, 258.
Worth, Pa., from Grantsville, Md. Coal, 232.
Wyandotte, Mich., to Tulsa and Cushing, Okla. Caustic soda, 750.

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INDEX DIGEST.

(The numbers in parentheses following citations indicate where subjects are considered.)

ABSORPTION. *See also* SWITCHING.

Refusal of defendants to absorb switching charges of the Michigan R. R. on traffic to or from complainants' plants on that road at Grand Rapids, Mich., while absorbing one another's switching charges on like traffic to or from industries located on their own tracks at that point under substantially similar circumstances and conditions, found unjustly discriminatory in violation of section 2. Reparation denied. *National Spring & Wire Co. v. Director General*, as Agent, 564.

A reciprocal switching arrangement between certain carriers does not justify their refusal to absorb the switching charges of another carrier, notwithstanding the smaller volume of traffic of the latter, if in fact unjust discrimination or undue prejudice is shown to result. *Id.* (565).

Rates on coal from points on the Millers Creek R. R., resulting from the cancellation by the C. & O. Ry. of the absorption of the switching charge of that line, found unreasonable and unduly prejudicial to extent they exceed the rates from the Big Sandy group 5 district. Reparation awarded. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 763.

Where the absorption of a switching charge subsequent to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. *Id.* (767).

Carrier sought to justify increased rate brought about by cancellation of absorption of switching charge on ground that it has been its policy not to divide its through rates with independent roads but to apply its rates to the junction points with such independent lines. *Held*: This policy tends to restrict the markets and was condemned in *Hughes Creek Coal Co.*, 29 I. C. C., 671, 676, and in other cases. *Id.* (767).

ACQUIESCENCE.

Mere acquiescence of shippers in increased rates proposed by carriers does not afford sufficient justification for their approval. *Mon. Coal Co. v. U. Ry. Co.*, 681.

ACT OF GOD.

Due to a flood which washed out complainant's tracks and disaligned its trestle bridge, cars could not be interchanged with its trunk line connection and demurrage accrued under the average agreement. *Held*: Cars delivered to a shipper for loading or unloading do not cease to be held for these purposes from the fact that the time of holding is extended by an act of God. Demurrage lawfully assessed. *Mount Hood R. R. Co. v. Director General*, as Agent, 116.

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ADJUSTMENT OF RATES. *See also* **RELATIVE RATES.**

On corn sirup, or glucose, unmixed, in tank cars, from Chicago, Ill., and other points to Birmingham, Montgomery, and Dothan, Ala., found unduly prejudicial to those points and unduly preferential of New Orleans, La., to extent that rates to Birmingham or Montgomery exceed the rates to New Orleans, and to extent rates to Dothan exceed by more than 10 cents the rates to New Orleans. *Montgomery Chamber of Commerce v. Director General*, as Agent, 203.

Increased rate on fuel oil moving by water from interstate or foreign points, resulting from the substitution of a flat increase of 4.5 cents in lieu of the percentage increase of 25 per cent authorized under general order No. 28, for the rail haul from Tampa and Port Tampa, Fla., to points in the Bone Valley District of Florida, found not unreasonable as the rate from the ports has been, and is, upon a lower basis than maintained elsewhere. *International Agricultural Corp. v. Director General*, as Agent, 728.

ADMINISTRATIVE RULING.

Reparation awarded on basis of rate provided under Rule 77 of Tariff Circular 18-A, where complainant, before shipment moved, made request for rate lower than provided under that rule. *Swift & Co. v. Director General*, as Agent, 201.

If parties fail to agree as to amount of reparation due under Rule V of the Commission's Rules of Practice, or any other contingency arises by virtue of which further proceedings are required to insure substantial justice, the Commission's power is not impaired by the rule; and when the spirit and purpose of the rule have been defeated neither party may insist upon a literal compliance therewith. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595 (596).

Rule V of the Commission's Rules of Practice is intended to provide a convenient method by which the parties may agree upon the exact amount of reparation without the necessity of further hearings, after a determination that reparation is due and the basis therefor. *Id.* (596).

Conference Ruling 84, cited. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co.*, 411 (412).

Rule 4 (1) of Tariff Circular 18-A cited. Cancellation of Rates from Natchez, 276; *Lion Coal Co. v. U. Ry. Co.*, 674 (676).

Rule 7 of Tariff Circular 18-A cited. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co.*, 411 (412).

Rule 57 of Tariff Circular 18-A cited. *Lion Coal Co. v. U. Ry. Co.*, 674 (676).

Rule 66 of Tariff Circular 18-A cited. Minimum Weight on Grain, 318 (320).

Rule 77 of Tariff Circular 18-A cited. *Virginia-Carolina Chemical Co. v. Director General*, as Agent, 321 (323); *Tarver, Steele & Co. v. Director General*, as Agent, 666 (667).

ADVANCE IN RATES. *See also* **DOUBLE INCREASE.****In General:**

Wage increases, increased prices of material, and other conditions which justified the Director General in increasing the rates under general order No. 28, prevailed in the first six months of 1918 in the same manner and to the same degree as when that order was entered on June 25, 1918. *Lake Park Refining Co. v. Director General*, as Agent, 381 (383).

ADVANCE IN RATES—Continued.

In General—Continued.

Proposed addition of a switching charge to group rates found not justified because the resulting increase in the through rates, which is what the shipper is interested in, has not been justified. *Lion Coal Co. v. U. Ry. Co.*, 674 (681).

Mere acquiescence of shippers in increased rates proposed by carriers does not afford sufficient justification for their approval. *Id.* (681).

It is as much an increase of rate to give less service for the same amount as to charge a greater amount for the same service. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 763 (767).

Where the absorption of a switching charge subsequent to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. *Id.* (767).

Acid: Proposed cancellation of commodity rate on acid, n. o. l. b. n., in tank-car loads, from Hillsboro, Ill., to certain Ohio River crossings, leaving in effect rates based upon a percentage of the fifth-class rates, the basis applying generally in this territory, found justified. *Acid from Hillsboro to Ohio River Points*, 583.

Apples: Proposed cancellation of storage in transit arrangement on apples destined to the Atlantic seaboard which would result in the application of higher combination rates to and from the storage points, found not justified. *Transit Rules and Regulations on Apples*, 333.

Chip board and strawboard: Proposed increased rates on, between points in western trunk line territory, found justified. *Chip Board and Strawboard*, 191.

Class and commodity rates:

Proposed cancellation of joint class and commodity rates from Natchez, Miss., and Vidalia, La., to Chicago, Ill., and other points, leaving in effect higher combination rates, found not justified. *Cancellation of Rates from Natches*, 276.

Proposed cancellation of joint class and commodity rates between Augusta, Ga., and stations on the Augusta Northern Ry., leaving in effect higher combination rates, found not justified. *Joint Through Rates Between Augusta, Ga., and Augusta Northern Ry.*, 324.

Cloth, press: Proposed cancellation of commodity rate on hair and wool press cloth, from Houston, Tex., to Vicksburg, Miss., and New Orleans, La., applicable only over routes composed in part of carriers that during the period of government operation were not under federal control, leaving in effect class rates applicable on traffic that moved wholly over lines under federal control, found justified. *Press Cloth Rates*, 414.

Coal:

Proposed increased rates on, from eastern Kentucky and Tennessee and southwestern Virginia to c. f. a. territory found justified; but those to St. Louis, Mo., and certain intermediate points, to Jeffersonville and New Albany, Ind., and certain other points in c. f. a. territory, and to points in the west and northwest, found not justified by the plea that they would restore a relationship formerly existing. *Coal from Kentucky, Tennessee, and Virginia*, 166.

ADVANCE IN RATES—Continued.

Coal—Continued.

Rates on, from points on the Millers Creek R. R., resulting from the cancellation by the C. & O. Ry. of the absorption of the switching charge of that line, found unreasonable and unduly prejudicial to extent they exceed the rates from the Big Sandy group-5 district. Reparation awarded. Consolidation Coal Co. v. C. & O. Ry. Co., 768.

Grain and products:

Proposed increased local rates on, from St. Louis, Mo., Peoria and Chicago, Ill., St. Paul, Minn., and other points to Kansas City, Mo.-Kans., found justified. Grain and Grain Products, Chicago to Kansas City, 128.

Proposed cancellation of a rule protecting the minimum applicable to car ordered when a carrier for its own convenience supplies a larger car, found not justified. Minimum Weight on Grain, 318.

Proposed increased local and proportional rates on, from Mississippi and Missouri river crossings and related points to destinations in Arkansas, found not justified, with exception of increased local rates from Kansas City, Mo., and points taking same or related rates, to Arkansas City and Rudora, Ark. Grain from River Crossings to Arkansas, 586.

Logs: Proposed cancellation of specific rates on saw logs and belts from points in northern Wisconsin and Michigan on the C. M. & St. P., Wisconsin Northwestern, Copper Range, and Mineral Range railroads, when for manufacture and reshipment via line of the Milwaukee, leaving in effect higher distance scale or combination of locals, found justified except as to rates from points served by the Copper Range and Mineral Range railroads. Saw Logs Between Michigan and Wisconsin Points, 850.

Lumber:

Because of dispute as to divisions, carrier proposed to cancel provisions for absorption of switching charges at Coeur d'Alene, Idaho, on lumber and articles taking same rates originating on the Northern Pacific at that point, resulting in increased through charges. Held: Cancellation not justified. Absorption of Switching Charges at Coeur d'Alene, 275.

Proposed cancellation of joint "water competitive" rates on, from points in the south to eastern trunk line and New England territories, leaving in effect higher so-called "normal" basis of commodity rates, found not justified. Water Competitive Rates on Lumber, 648.

Oil, fish: Proposed increased commodity rates on, in barrels or tank cars, from St. Marys, Ga., to Ohio and Mississippi river crossings and north Atlantic ports, found not justified, as the existing relation in rates between competing points in the same territory would be destroyed and St. Marys would be placed at a disadvantage as compared with Fernandina, Fla., and other producing points. Fish Oil from St. Marys, 511.

Passenger fares: Of certain electric lines operating from Belleville and East St. Louis, Ill., to St. Louis, Mo., increased by establishment of various fare groups or zones, found not unreasonable, unduly prejudicial or otherwise unlawful. Greater Belleville Board of Trade v. El. St. L. & S. Ry. Co., 741.

ADVANCE IN RATES—Continued.

Sulphur: Proposed increased rates and lower minimum on, ground or refined, from Louisiana and Texas points to various interstate destinations, found justified. Sulphur and Brimstone from Louisiana and Texas, 579.

ADVANTAGES AND DISADVANTAGES. See also LOCATION.

The Commission can not require carriers to adjust rates for the purpose of equalizing natural or commercial disadvantages. Natchez Chamber of Commerce v. Director General, 397 (400).

AFFIDAVIT.

Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants with understanding that if defendants object, they may request a further hearing with respect thereto. American Fork & Hoe Co. v. St. L. & S. F. R. R. Co., 85 (90).

AGENT.

Failure of carrier to notify complainant of arrival of a shipment, consigned to itself in care of a warehouse company, in time to comply with tariff requirements necessary to secure the application of joint rate from origin to ultimate destination, resulted in the loss of that privilege. *Held*: As complainant made arrangement with warehouse company for receipt and storage of the shipment, he recognized that company as his agent and delivery to the warehouse constituted delivery to complainant. Scattergood & Co. v. Director General, as Agent, 155.

AGGREGATE OF INTERMEDIATES. See THROUGH AND LOCAL AGREEMENT.

Where complainant, in undertaking to perform spotting service, relied upon an agreement that it would be granted an allowance therefor, carrier can not be heard to say that it has always been ready and willing to perform the spotting, and that complainant voluntarily relieved it from performing the service. United Chemical & Organic Products Co. v. Director General, as Agent, 523 (525).

ALQUIPPA & SOUTHERN RAILROAD COMPANY.

Found to be a common carrier subject to the act. Jones & Laughlin Steel Co. v. Director General, as Agent, 325 (331).

History and description of. *Id.* (323-327).

ALLOWANCES.

Refusal of defendant to grant an allowance to complainant for cost of spotting found to have resulted in unreasonable and unduly prejudicial charges in view of the fact that tariffs contemplated delivery to, and taking of cars from, places of unloading and loading at industries along defendant's line. Reparation awarded. United Chemical & Organic Products Co. v. Director General, as Agent, 523.

Giving an allowance in lieu of performing spotting service is optional with the carriers. *Id.* (524).

Where complainant, in undertaking to perform spotting service, relied upon an agreement that it would be granted an allowance therefor, carrier can not be heard to say that it has always been ready and willing to perform the spotting, and that complainant voluntarily relieved it from performing the service. *Id.* (525).

ALLOWANCES—Continued.

Failure of defendants to spot cars within complainant's plant at Arlington, Staten Island, N. Y., beyond the established interchange tracks, or to make an allowance to complainants for performing that service with their own facilities, not shown unreasonable or unduly prejudicial by reason of fact that such services or allowances were performed or made at other industries in the same rate district and elsewhere. *Downey Ship Building Corp. v. S. I. R. T. Ry. Co.*, 543.

Whatever transportation service the law requires carriers to supply, they have the right to furnish, and even where line-haul or terminal delivery rate covers receipt and delivery on industry spurs, or on interior tracks of industrial plants, the owner of the property transported may not in every case receive an allowance from the carriers when he elects to perform that service. *Id.* (548).

Failure of defendants to perform service of switching and spotting between trunk line and loading and unloading points within complainant's plant at Brackenridge, Pa., in the Pittsburgh rate district, or to make an allowance covering the cost of that service, while performing such services without additional charge or making allowances to competitors similarly situated in the same district, found to result in unjust discrimination in violation of Section 2. *Allegheny Steel Co. v. Director General*, as Agent, 575.

ALTERNATIVE.

If a service is a transportation duty, carriers may elect either to do it themselves or hire the shipper to do it for them; but practices in this respect must be free from undue prejudice. *United Chemical & Organic Products Co. v. Director General*, as Agent, 523 (524).

Giving an allowance in lieu of performing spotting service is optional with carriers. *Id.* (524).

ANALOGOUS ARTICLES. See COMPARATIVE RATES.**ARBITRARY. See DIFFERENTIAL.****AVERAGE AGREEMENT. See DEMURRAGE.****BACK HAUL.**

Instructions were received after shipment passed last point at which re-consignment could be effected at joint rate, necessitating back haul to a point not on a through route or via which joint rate applied, to effect reconsignment. *Held*: As service required was analogous to that required for two local shipments, combination rates charged found not unreasonable. *Northern Brokerage Co. v. Director General*, as Agent, 182.

The through rate can not be protected where reconsignment is effected at a point not on a through route to which the rate applies, or where a back haul becomes necessary, except under special tariff provisions. *Id.* (183).

BAGGAGE.

Excess baggage charges required by state authority to be maintained within the state, lower than the corresponding interstate charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Montana Rates and Fares*, 61; *Ohio Rates, Fares, and Charges*, 78; *Indiana Rates, Fares, and Charges*, 837; *Utah Rates, Fares, and Charges*, 838; *Nevada Rates, Fares, and Charges*, 623.

BAGGAGE—Continued.

Transportation without additional charge of a greater amount of baggage for passengers traveling in intrastate commerce, than is accorded passengers traveling in interstate commerce, under corresponding fares, found to result in unjust discrimination against interstate commerce and should be removed by reducing the intrastate baggage allowance to the level of the interstate allowance. *South Carolina Fares and Charges, 290; North Carolina Fares and Charges, 362.*

BAGGAGE-CAR SERVICE.

Rules, regulations, and practices governing the transportation of milk and cream, 1 c. l., found unreasonable and unduly prejudicial in that they fail to provide that, on days on which no open-iced car service is provided, milk and cream may be shipped in baggage cars at the rates published for such transportation. *Bryant & Chapman Co. v. Director General, as Agent, 237.*

BILL OF LADING.

Carrier's contention that bills of lading must govern in determining the rate legally applicable, and that shipper can not show by parol evidence that shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading, found to be without merit. *Harris Bros. Co. v. Director General, as Agent, 428 (430).*

BILLING.

No tariff authority appeared for rates charged on two tank-car loads of oil, billed as solar oil. Shipments found to consist of gas oil, and rates applicable thereon found unreasonable to extent they exceeded by more than 2.5 cents the rates on fuel oil. Adjustment of charges directed. *Acme Cement Plaster Co. v. Director General, as Agent, 659.*

BLANKET RATES. See GROUP RATES.

BOTH DIRECTIONS.

Class rates legally applicable on isolated shipments of peanut oil from Suffolk, Va., to Macon, Ga., found not unreasonable as compared with lower commodity rate in the opposite direction, which lower rate was subsequently established after request therefor made. *Procter & Gamble Co. v. Director General, as Agent, 757.*

BRIDGE TOLLS.

Class rates between Cairo, Ill., and points in southeast Missouri found to be reasonable but unduly prejudicial to Cairo to extent they exceed by more than reasonable bridge tolls the rates maintained for similar distances between points in southeast Missouri. *Cairo Asso. of Commerce v. B. C. R. R. Co., 519.*

BURDEN OF PROOF. See also PROOF.

Where the absorption of a switching charge subsequent to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. *Consolidation Coal Co. v. C. & O. Ry. Co., 763 (767).*

CANADA.

International rates established by the Director General on June 25, 1918, under general order No. 28, between points in western Canada and St. Paul, Minn., disrupted the relationship existing with Canadian rates which was subsequently restored by reducing the international rates. *Held:* Rates originally established and now maintained were and are for purpose of enabling carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines. Rates during interim not unreasonable. *Swift & Co. v. C. N. Rys., 747.*

CANCELLATION.

Rate once lawfully established continues to be the legal rate until legally cancelled. Subsequent tariff naming new rates without cancelling previous rate cannot carry new rates into lawful effect. *Illit-Braff Chemical Co. v. Director General*, as Agent, 720 (721).

CAR DISTRIBUTION.

Unsystematic method of distributing coal cars during period of car shortage, to shippers on the line of the Jennings R. R., disapproved for the future because it afforded opportunity for undue preference of certain shippers and undue prejudice of others, especially where railroad employees were themselves interested in shipping coal. *Griffith v. Jennings*, 282.

Upon complaint praying for an order requiring carriers to refrain from counting box cars as part of the distributive share of cars furnished mines in time of car shortage. *Held*: Commission without authority to grant prayer as no emergency requiring immediate action found to exist. *Dickinson Fuel Co. v. C. & O. Ry. Co.*, 815.

Practices of the Director General in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways, found to subject operators of mines on those roads to undue prejudice and disadvantage to extent that the percentage of cars furnished was less than the average percentage furnished mines in the same general coal producing region on the Pittsburgh & Lake Erie and Pennsylvania railroads. Record held open on question of damages. *Northern West Virginia Coal Asso. v. P. R. R. Co.*, 569.

Orders for cars needed by the Morgantown & Wheeling Ry., were placed with the Monongahela Ry., and by it with the trunk lines. Fact that the Wheeling was not under federal control immaterial as it was as much dependent upon the connections of the Monongahela for equipment as was the Monongahela itself, and its mines were entitled to equal treatment in the matter of car distribution. *Id.* (569).

It is not possible always for carriers to furnish particular mines their exact quota of cars during periods of car shortage and if shortages or overages are adjusted with reasonable promptness a carrier may be said to have fulfilled its duty. *Id.* (573).

CAR FURNISHING.

Proposed cancellation of the application to shipments of grain and grain products of a rule protecting the minimum applicable to car ordered when a carrier for its own convenience supplies a larger car, found not justified. *Minimum Weight on Grain*, 313.

It is the duty of carriers to publish regulations protecting the minimum applicable in connection with the car ordered, subject to reasonable provisions for the protection of equipment. See also *Rule 66 of Tariff Circular 18-A*. *Id.* (320).

CAR MILE EARNINGS. See EARNINGS.**CAR RENTAL. See RENTAL.****CAR SERVICE.**

Commission without authority to require carriers to refrain from counting box cars as part of the distributive share of cars furnished mines unless it is first found that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists. *Dickinson Fuel Co. v. C. & O. Ry. Co.*, 315 (317).

CAR SHORTAGE.

Unsystematic method of distributing coal cars, during period of car shortage, to shippers on the line of the Jennings R. R., disapproved for the future because it afforded opportunity for undue preference of certain shippers and undue prejudice of others, especially where railroad employees were themselves interested in shipping coal. *Griffith v. Jennings*, 282.

Upon complaint praying for an order requiring carriers to refrain from counting box cars as part of the distributive share of cars furnished mines in time of car shortage. *Held*: Commission without authority to grant prayer as no emergency requiring immediate action found to exist. *Dickinson Fuel Co. v. C. & O. Ry. Co.*, 815.

It is not possible always for carriers to furnish particular mines their exact quota of cars during periods of car shortage and if shortages or overages are adjusted with reasonable promptness a carrier may be said to have fulfilled its duty. *Northern West Virginia Coal Asso. v. P. R. R. Co.*, 509 (573).

CAR SPOTTING. *See SPOTTING CARS.***CARRIER COMPETITION.** *See COMPETITION.***CHICAGO & WEST RIDGE RAILROAD.**

Found not to be a common carrier subject to the act. *Trackage Charge on Loaded Cars*, 134.

History and description of. *Id.* (135).

CIRCUITOUS ROUTES.

Carriers which have indirect routes to points reached by more direct lines or routes authorized to meet the rates established via such direct lines or routes, and to maintain higher rates to intermediate points, provided that rates to such intermediate points do not exceed the rates via the shortest route or for the same distance via the shorter route to the competitive or common point. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 687 (714).

CLASS AND COMMODITY RATES. *See also CLASS RATES; COMMODITY RATES.*

Between Meridian, Miss., and points in Alabama found unreasonable and unduly prejudicial to Meridian and its shippers as compared with class and commodity rates for like distances in Alabama. Reasonable maximum rates between Meridian and points in Alabama prescribed. *Meridian Traffic Bureau v. S. Ry. Co.*, 5.

Fourth-class rate legally applicable on intrastate shipments of sulphuric acid, in tank cars, found not unreasonable as compared with lower commodity rate subsequently established, there being no movement before or since the one here involved. *Midland Refining Co. v. Director General*, as Agent, 125.

Class rate legally applicable on cotton from Clarkton, Mo., to Cairo, Ill., exceeded lower commodity rate applicable via other routes and subsequently established via route of movement but in connection with a different junction. Reparation awarded. *Roberts Cotton Oil Co. v. Director General*, as Agent, 180.

Class rate on apple pomace from Watsonville, Calif., to St. Louis, Mo., exceeded lower commodity rate subsequently established. Reparation awarded. *Best-Clymer Mfg. Co. v. Director General*, as Agent, 153.

Class rate charged on sulphuric acid, in tank-car loads, from Atlanta, Ga., to La Grange, Ga., exceeded lower commodity rate applicable under Rule 77 of Tariff Circular 18-A. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 201.

CLASS AND COMMODITY RATES—Continued.

- Proposed cancellation of joint class and commodity rates from Natchez, Miss., and Vidalia, La., to Chicago, Ill., and other points, leaving in effect higher combination rates, found not justified. Cancellation of Rates from Natchez, 276.
- Class rates on cotton seed from Charlotte, N. C., to Augusta and Atlanta, Ga., exceeded distance commodity rates maintained between points in North Carolina and Georgia in the same general vicinity. Reasonable rates prescribed from Charlotte to Augusta and reparation awarded. Buckeye Cotton Oil Co. v. Director General, as Agent, 231.
- Sixth-class rate on tankage, dry, from Curtis Bay, Md., to Pinners Point, Va., found not unreasonable as compared with lower commodity rate in effect via other routes and subsequently established via route of movement. Virginia-Carolina Chemical Co. v. Director General, as Agent, 377.
- Proposed cancellation of commodity rate on hair and wool press cloth from Houston, Tex., to Vicksburg, Miss., and New Orleans, La., applicable only over routes composed in part of carriers that during the period of government operation were not under federal control, leaving in effect class rates applicable on traffic that moved wholly over lines under federal control, found justified. Press Cloth Rates, 414.
- Class A rate charged on mussel shells from Bowling Green, Ky., to Memphis, Tenn., exceeded lower commodity rate subsequently established. Reparation awarded. Memphis Freight Bureau, for Blumenfeld Co. (Inc.) v. Director General, as Agent, 431.
- Fifth-class rate on jute and jute butts from East Boston, Mass., to Ludlow Junction, Mass., during federal control, exceeded lower commodity rate subsequently established. Reparation awarded. Ludlow Mfg. Associates v. Director General, as Agent, 441.
- Sixth-class rate on cottonseed oil from Carlisle, S. C., to Port Ivory, N. Y., exceeded lower commodity rate in effect from more distant points and subsequently established from Carlisle. Reparation awarded. Procter & Gamble Mfg. Co. v. Director General, as Agent, 447.
- Fifth-class rates on crude petroleum, in tank-car loads, from Bowling Green, Ky., and Rugby Road, Tenn., to Louisville, Ky., exceeded lower commodity rates subsequently established. Reparation awarded. Standard Oil Co. (Ky.) v. Director General, as Agent, 449.
- Class rate legally applicable on cotton seed from Somerville, Tenn., to Atlanta, Ga., exceeded lower distance commodity rate subsequently established. Reparation awarded. Empire Cotton Oil Co. v. Director General, as Agent, 505.
- Volume of tonnage may in some circumstances warrant the establishment of a commodity rate lower than the class rate normally applicable. Gallon Iron Works & Mfg. Co. v. Director General, as Agent, 515 (517).
- Proposed cancellation of commodity rate on acid, n. o. l. b. n., in tank-car loads, from Hillsboro, Ill., to certain Ohio River crossings, leaving in effect rates based upon a percentage of the fifth-class rates, the basis applying generally in this territory, found justified. Acid from Hillsboro to Ohio River Points, 533.
- Fifth-class rate on silicate of soda, in tank-car loads, from Rahway, N. J., to Port Ivory, Staten Island, N. Y., exceeded lower commodity rate in effect from Chrome, N. J., and subsequently established from Rahway. Reparation awarded. Procter & Gamble Mfg. Co. v. Director General, as Agent, 613.

CLASS AND COMMODITY RATES—Continued.

Fifth-class rate on green salted hides from Cheyenne, Wyo., to Salt Lake City, Utah, found not unreasonable as compared with commodity rate on packing-house products. Volume of movement would not warrant establishment of commodity rate on hides and fifth-class rates are not out of line with other fifth-class rates for similar distances in the same general territory. *Bissinger & Co. (Inc.) v. Director General*, as Agent, 657.

Class rate on cotton seed from Pageland, S. C., to Atlanta, Ga., exceeded lower commodity rate to Mena, Ga., a point within the Atlanta switching limits. Reasonable maximum rate prescribed and reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent, 661.

Express class rates on oleomargarine, l. c. l., from Kansas City, Kans., to Los Angeles, Calif., exceeded lower commodity rates on butter, which lower rates were subsequently made applicable to oleomargarine. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 663.

Sixth-class rate on wood pulp from Port Wentworth, Ga., to Bogalusa, La., exceeded lower joint commodity rate subsequently established. Reparation awarded. *Atlantic Paper & Pulp Corp. v. Director General*, as Agent, 671.

Class rate legally applicable on emergency intrastate shipments of old rails, moving during federal control, found not unreasonable as compared with lower commodity rate subsequently established after request therefor made. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 723.

Class rate on silica sand from Gulon, Ark., to Sapulpa, Okla., exceeded lower commodity rate in effect from Gray's Summit and Pacific, Mo., farther distant points, which lower rate was subsequently established from Gulon. Reparation awarded. *Odell-Daly Material Co. v. Director General*, as Agent, 737.

Class rates legally applicable on isolated shipments of peanut oil from Suffolk, Va., to Macon, Ga., found not unreasonable as compared with lower commodity rate in the opposite direction, which lower rate was subsequently established after request therefor made. *Precter & Gamble Co. v. Director General*, as Agent, 757.

CLASS RATES. See also CLASS AND COMMODITY RATES.

Table of distance class rates applicable on intrastate traffic in Alabama as compared with rates on interstate traffic for distances up to 200 miles. Appendixes 1 and 2. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (7, 8, 28, 29).

From Meridian, Miss., to Southern Ry. stations in Alabama, compared with class rates of the Southern Ry. and of other lines in the south generally. Appendix 5. *Id.* (15, 30).

From Fort Dodge, Iowa, to certain points in southwestern Minnesota, eastern South Dakota, and southeastern North Dakota, found unduly prejudicial to Fort Dodge, in so far as they exceed the class rates from Des Moines, Iowa, to same destinations. *Fort Dodge Commercial Club v. Director General*, 224.

CLASSIFICATION.

Locomotives, k. d.: Fourth-class rating on, essential parts of which were missing at time of shipment, found legally applicable as the absence of such parts did not affect the identity of the article transported or destroy its fundamental character from a transportation or tariff standpoint. *Harris Bros. Co. v. Director General*, as Agent, 423.

CLASSIFICATION—Continued.

Pluto water: Rates and ratings in western classification territory on drugs or medicines, n. o. i. b. n., found applicable to shipments of concentrated Pluto water, but unreasonable to extent they exceed the ratings and rates on mineral water, not carbonated, and analogous commodities taking same rates. *French Lick Springs Hotel Co. v. A. & W. Ry. Co.*, 615.

Tire carriers, automobile: Fourth-class rates on, found applicable and not unreasonable as compared with fifth-class rates on automobile parts. Official classification discloses that other similar attachments such as bumper guards, shock absorbers, and trunk racks are not recognized as automobile parts, but are given ratings of fourth-class or higher. *Buick Motor Co. v. Director General*, as Agent, 669.

COMBINATION RATES. *See also* LOCAL RATES.

Legally applicable on kerosene oil, in tank-car loads, from Electra and Brownwood, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export, found unreasonable to extent they exceeded lower combination rate herein prescribed. Reparation awarded. *General American Oil Co. v. Director General*, as Agent, 138.

Legally applicable on gypsum hollow building blocks from Grand Rapids, Mich., to Asylum, Tenn., based on Ohio River, found not unreasonable as the class rate south of the river compares favorably with class rates between other points in the same territory for comparable distances, and record fails to show such volume of movement as would justify prescribing a commodity rate. *Acme Cement Plaster Co. v. Director General*, as Agent, 141.

On cotton seed from Louisiana points to Newton, Miss., found not unreasonable or unduly prejudicial, except rates basing on Rayville, La., which are found unreasonable in so far as the factors to Rayville exceeded the distance commodity rates to so-called oil-mill stations on the Missouri Pacific. Reparation awarded. *Newton Oil Mill v. Director General*, as Agent, 433.

Where rates are based on combinations and tariff governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing combination rates on through shipments. *Indian Refining Co. v. Director General*, as Agent, 438 (439).

On intrastate traffic, moving under combination rates, the Commission's jurisdiction is limited to rates over that portion of the haul over lines under federal control. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

On coal from mines on the Higginsville Switch Co., at Higginsville, Mo., to destinations in Missouri and Kansas, composed of the switch company's local rates to the junctions, and the state and interstate factors from the junctions to destinations, found not unreasonable, discriminatory, or unduly prejudicial. *Farmers Fuel Co. v. Director General*, as Agent, 715.

Following *Lowry Lumber Co.*, 59 I. C. C., 709, combination rates, plus demurrage and reconsignment charges, found not unreasonable where shipment was placed for unloading at originally billed destination and subsequently reconsigned. *Lowry Lumber Co. v. Director General*, as Agent, 718.

COMBINATION RATES—Continued.

Rates on caustic soda from points east of St. Louis, Mo., to certain Oklahoma points found unreasonable to extent they exceeded rates made by the use of locals or differentials to St. Louis, plus rates beyond which do not exceed rates from St. Louis to Oklahoma City, Okla. Reparation awarded. Oklahoma Petroleum & Gasoline Co. v. Director General, as Agent, 750 (755).

COMMODITY RATES. See also CLASS AND COMMODITY RATES.

In the absence of other evidence that a commodity rate is unreasonable or unduly prejudicial the fact that it is a moderately greater or less percentage of a corresponding class rate is not sufficient ground for condemning it. Greater Des Moines Committee (Inc.) v. Director General, 408 (404).

COMMON CARRIER.

The following short lines found to be common carriers subject to the act:

Aliquippa & Southern R. R. Co. Jones & Laughlin Steel Co. v. Director General, as Agent, 325 (331).

Chicago & West Ridge R. R. Trackage Charge on Loaded Cars, 134. Jennings R. R. Griffith v. Jennings, 232 (236).

Millers Creek R. R. Consolidation Coal Co. v. C. & O. Ry. Co., 763 (768).

Higginsville Switch Co., found not to be a common carrier subject to the act. Farmers Fuel Co. v. Director General, as Agent, 715 (718).

COMMUTATION TICKETS.

Reduction of time within which commutation tickets of certain electric lines operating from Belleville and East St. Louis, Ill., to St. Louis, Mo., may be used, by limiting their use to the calendar month in which issued in lieu of 60-day period previously in effect, not found unreasonable as carriers are merely standardizing their practice and bringing it into conformity with that which has been in effect on their other divisions. Greater Belleville Board of Trade v. E. St. L. & S. Ry. Co., 741 (746).

COMPARATIVE RATES.

Channels, steel: Rate on pressed steel side members of automobile truck frames exceeded the rate on structural steel channels. Reasonable relationship prescribed and reparation awarded. Moreland Motor Truck Co. v. Director General, as Agent, 179.

Culverts: Rates on cast-iron culverts or culvert pipe not found unreasonable or otherwise unlawful as compared with rates on cast-iron pipe. Gallion Iron Works & Mfg. Co. v. Director General, as Agent, 515.

Guard rails, automobile: Second-class rate on, exceeded rating of fourth-class on other automobile parts, which lower rate was subsequently made applicable to guard rails. Reparation awarded. Crump Co. v. Director General, as Agent, 761.

Handle material: On further consideration, original report 53 I. C. C., 245, rates on, not further finished than sawed or turned to shape, found unreasonable to extent they exceeded rates on lumber. Reparation awarded. American Fork & Hoe Co. v. St. L. & S. F. R. R. Co., 85.

Hides, green salted: Fifth-class rate on, found not unreasonable as compared with commodity rate on packing-house products. Bissinger & Co. (Inc.) v. Director General, as Agent, 657.

Malt, barley: Combination rate legally applicable on, not found unreasonable as compared with lower commodity rate on grain and grain products, including barley. Kurth Malting Co. v. Director General, as Agent, 114.

COMPARATIVE RATES—Continued.

Molasses, blackstrap: Rates on imported blackstrap molasses, in tank-car loads, found not unreasonable as compared with rates on imported fertilizer material, petroleum and products, cottonseed meal and hulls and other commodities. *Meridian Traffic Bureau v. Director General*, as Agent, 549.

Naphtha, coal tar: Rate applicable on sporadic shipments of, in tank-car loads, exceeded lower rate on petroleum naphtha, which lower rate was subsequently made applicable to coal-tar naphtha. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 506.

Oleomargarine: Express class rates on, l. c. l., exceeded lower commodity rates on butter, which lower rates were subsequently made applicable to oleomargarine. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 663.

Pluto water: Rates and ratings in western classification territory on drugs or medicines, n. o. i. b. n., found applicable to shipments of concentrated Pluto water, but unreasonable to extent they exceed the rates and ratings on mineral water, not carbonated, and analogous articles taking same rates. *French Lick Springs Hotel Co. v. A. & W. Ry. Co.*, 615.

Poultry: Rates and ratings on live poultry and dressed poultry in official classification territory, compared. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284.

Seed, sudan: Rate on, not found unreasonable as compared with rate on cane seed. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co.*, 411 (412).

Slate, roofing: Rates on, not shown unreasonable or unduly prejudicial as compared with rates on competing roofing materials. *American Sea Green Slate Co. v. Director General*, as Agent, 196.

Tire carriers, automobile: Fourth-class rates on, found not unreasonable as compared with fifth-class rates on automobile parts. Official classification discloses that other similar attachments such as bumper guards, shock absorbers, and trunk racks are not recognized as automobile parts, but are given ratings of fourth-class or higher. *Buick Motor Co. v. Director General*, as Agent, 669.

COMPENSATORY RATES.

Carrier contended that rate on butter when applied to oleomargarine was unremunerative, but the continued maintenance of the rate on butter justifies the conclusion that carrier regarded it as a compensatory rate, and if compensatory for butter, it would have been compensatory for oleomargarine. *Armour & Co. v. Director General*, as Agent, 663 (665).

COMPETITION.

Carrier:

While in a situation in which there is undue preference of one shipper and undue prejudice to another in violation of section 8 of the act, competitive relations between the parties must generally appear, not only is such a relationship between shippers not essential to a violation of section 2, but the existence of competition between carriers does not take an otherwise unlawful discrimination out of that section. *National Spring & Wire Co. v. Director General*, as Agent, 564 (566).

The Commission appreciates that in order to participate in the business from Pittsburgh, Pa., to the Orient, carriers have made a through export rate to Pacific coast ports lower than could be prescribed, and has recognized their right to meet competitive conditions, which, under the act, they could not be required to meet, provided that in doing so they do not create unjust discrimination. *Inland Steel Co. v. Director General*, 640 (642).

COMPETITION—Continued.**Carrier—Continued.**

International rates established by the Director General on June 25, 1918, under general order No. 28, between points in western Canada and St. Paul, Minn., disrupted the relationship existing with Canadian rates which was subsequently restored by reducing the international rates. *Held*: Rates originally established and now maintained were and are for purpose of enabling carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines. Rates during interim not unreasonable. *Swift & Co. v. C. N. Rys.*, 747.

Market: Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (11).

Persons: While in a situation in which there is undue preference of one shipper and undue prejudice to another in violation of section 8 of the act, competitive relations between the parties must generally appear, not only is such a relationship between shippers not essential to a violation of section 2, but the existence of competition between carriers does not take an otherwise unlawful discrimination out of that section. *National Spring & Wire Co. v. Director General*, as Agent, 564 (563).

Water:

Rates on flaxseed from Minneapolis, St. Paul, and Duluth, Minn., to Des Moines, Iowa, found not unreasonable or unduly prejudicial in comparison with depressed rates established because of water competition from same points of origin to Chicago, Ill. *Greater Des Moines Committee (Inc.) v. Director General*, 403.

Proposed cancellation of joint "water competitive" rates on lumber from points in the south to eastern trunk line and New England territories, leaving in effect higher so-called "normal" basis of commodity rates, found not justified. *Water Competitive Rates on Lumber*, 648.

COMPETITIVE CONDITIONS.

The Commission appreciates that, in order to participate in the business from Pittsburgh, Pa., to the Orient, carriers have made a through export rate to Pacific coast ports lower than could be prescribed, and has recognized their right to meet competitive conditions, which, under the act, they could not be required to meet, provided that in doing so they do not create unjust discrimination. *Inland Steel Co. v. Director General*, 640 (642).

COMPONENT. *See* Factor.**COMPRESSION IN TRANSIT.** *See* TRANSIT ARRANGEMENTS.**CONCURRENCE.**

Where rates are based on combinations and tariff governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing combination rates on through shipments. *Indian Refining Co. v. Director General*, as Agent, 438 (439).

CONDUCTOR'S PENALTY CHARGE. *See* PENALTY.**CONFERENCE RULINGS.** *See* ADMINISTRATIVE RULINGS.

CONGRESS.

The manifest intent of Congress was to repose in the Commission authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any undue, unreasonable or unjust discrimination. *Intrastate Rates within the State of Texas*, 421 (426).

CONNECTING LINE.

Demurrage charges assessed on shipments constructively placed at points on connecting lines, due to inability of consignee to accept delivery, found not unreasonable or unlawful, it not being shown that charges would have been less if cars had been held on defendant's tracks adjacent to complainant's plant. *Kirk & Co. v. C. & N. W. Ry. Co.*, 491.

CONSIGNOR AND CONSIGNEE. See PARTIES.**CONSTRUCTION OF STATUTE.**

The law requires the Commission to fix rates, fares, and charges so that carriers shall earn a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and to the extent that intrastate rates, fares, and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. *South Carolina Fares and Charges*, 290 (297).

CONSTRUCTIVE PLACEMENT. See also DELIVERY; PLACEMENT.

Demurrage charges assessed on shipments constructively placed at points on connecting lines, due to inability of consignee to accept delivery, found not unreasonable or unlawful, it not being shown that charges would have been less if cars had been held on defendant's tracks adjacent to complainant's plant. *Kirk & Co. v. C. & N. W. Ry. Co.*, 491.

CONTRACT. See AGREEMENT.**COST OF SERVICE.**

Is only one of the elements to be considered in determining what would be a proper relationship between intrastate and interstate fares. If it does cost more to handle one character of passenger traffic than the other it would not necessarily follow that there should be a difference in rates. *Nebraska Rates, Fares, and Charges*, 805 (808).

Not the only element entering into the making of rates. *American Tobacco Co. v. Director General*, as Agent, 496 (488).

CUMMINS AMENDMENT.

Carriers made no specific reference in the tariff to the Commission's order authorizing the publication of rates based on value, as required by section 20 of the act, and if they desire to continue such rates the tariff should be accordingly corrected. *Meridian Traffic Bureau v. Director General*, as Agent, 549 (550).

DAMAGES.

Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of Commission's rules of practice if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants, with understanding that if defendants object, they may request a further hearing with respect thereto. *American Fork & Hoe Co. v. St. L. & S. F. R. R. Co.*, 85 (90).

Upon supplemental report on further hearing, decision in 56 I. C. C., 609, modified as to the amount of reparation awarded. *Plymouth Coal Co. v. D., L. & W. R. R. Co.*, 183.

DAMAGES—Continued.

Consignor found entitled to reparation where shipment was sold at a price which included the cost of transportation, and freight charges were paid by consignee and deducted from invoice price in settlement with consignor. *Federal Oil & Supply Co. v. Director General*, 185 (187).

Shipments were sold on a delivered basis at a price which included a specific freight rate. While total freight charges were paid by consignee in the first instance, consignor was required to credit consignee in amount that charges collected exceeded rate quoted. *Held*: Consignor entitled to reparation. *Keeler Lumber & Fuel Co. v. Director General*, as Agent, 199 (200).

Following *Darnell-Taensler Case*, 245 U. S., 531, contention that complainants are not entitled to reparation on the ground that transportation charges were included in the selling price of the commodity, found without merit. *Wheeler & Timlin v. Director General*, as Agent, 265 (266).

Upon further hearing reparation awarded on shipments of pig iron from points in Alabama and Tennessee to Ohio River crossings and points in c. f. a. territory. Preceding supplemental report, 52 I. C. C., 576. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595.

If parties fail to agree as to amount of reparation due under Rule V of the Commission's Rules of Practice, or any other contingency arises by virtue of which further proceedings are required to insure substantial justice, the Commission's power is not impaired by the rule; and when the spirit and purpose of the rule have been defeated neither party may insist upon a literal compliance therewith. *Id.* (596).

Where an unreasonable rate has been collected the liability of the parties is joint and several and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service were not made parties defendant. *Id.* (596).

DELIVERY. *See also* PLACEMENT.

Due to a strike of lightermen, carriers refused to accept order for delivery of export shipment to steamship. On day steamer arrived second order was tendered for delivery to another steamship, and was accepted subject to delay. *Held*: Storage charges accruing not found unreasonable or unlawful as complainant gave orders for different delivery and carriers would have been without authority to act upon first order even if it had been accepted. *Cade (Inc.) v. P. R. R. Co.*, 151.

Failure of carrier to notify complainant of arrival of a shipment, consigned to itself in care of a warehouse company, in time to comply with tariff requirements necessary to secure the application of joint rate from origin to ultimate destination, resulted in the loss of that privilege. *Held*: As complainant made arrangement with warehouse company for receipt and storage of the shipment, he recognized that company as his agent and delivery to the warehouse constituted delivery to complainant. *Scattergood & Co. v. Director General*, as Agent, 155.

Consignee authorized carrier whose rails reached its plant to turn unsorted shipments over to another carrier for delivery, resulting in a three-line haul. Joint rate involving a two-line haul, lower than combination applicable for three-line haul in effect. *Held*: Rate legally applicable not found unreasonable as compared with rates for comparable distances for three-line hauls or with joint rate in effect and subsequently established via route of movement. *Southern Fuel Co. v. Director General*, as Agent, 457.

DELIVERY—Continued.

Demurrage charges assessed on shipments constructively placed at points on connecting lines, due to inability of consignee to accept delivery, found not unreasonable or unlawful, it not being shown that charges would have been less if cars had been held on defendant's tracks adjacent to complainant's plant. *Kirk & Co. v. C. & N. W. Ry. Co.*, 491.

DEMURRAGE.

Due to a flood which washed out complainant's tracks and disaligned its trestle bridge, cars could not be interchanged with its trunk line connection and demurrage accrued under the average agreement. *Held*: Cars delivered to a shipper for loading or unloading do not cease to be held for those purposes from the fact that the time of holding is extended by an act of God. Demurrage lawfully assessed. *Mount Hood R. R. Co. v. Director General*, as Agent, 118.

Fundamentally may be said to be a charge for undue detention of cars by shippers. *Id.* (117).

Tariff rule providing that demurrage charges will begin to run from the first 7 a. m. after receipt of cars from a switching line found unreasonable as applied to shipments received between 4 p. m. and 7 a. m. Reparation awarded. *Washburn-Crosby Co. v. Director General*, as Agent, 157.

Contention that notation on bill of lading "allow inspection" was complainant's authority to direct reconsignment, and that no demurrage should have accrued because he gave such instructions on day shipment arrived, *Held*: Since original instructions called for reconsignment upon basis of through rate and complainant was not a party to the bill of lading, refusal to reconsign found proper and demurrage legally assessed. *Northern Brokerage Co. v. Director General*, as Agent, 182 (184).

Demurrage charges assessed on shipments constructively placed at points on connecting lines, due to inability of consignee to accept delivery, found not unreasonable or unlawful, it not being shown that charges would have been less if cars had been held on defendant's tracks adjacent to complainant's plant. *Kirk & Co. v. C. & N. W. Ry. Co.*, 491.

Accruing due to failure of complainant to give disposition orders in answer to telegraphic request after arrival of car at originally billed destination, found not unreasonable or otherwise unlawful. *Lowry Lumber Co. v. B. & M. R. R.*, 789.

May properly be assessed for a detention which the shipper can avoid. *Id.* (740).

DENSITY OF TRAFFIC. See VOLUME OF TRAFFIC.**DEPRESSED RATES. See also LOW RATES.**

Rates on flaxseed from Minneapolis, St. Paul, and Duluth, Minn., to Des Moines, Iowa, found not unreasonable or unduly prejudicial in comparison with depressed rates established because of water competition from same points of origin to Chicago, Ill. *Greater Des Moines Commission (Inc.) v. Director General*, 403.

DETENTION. See DEMURRAGE.**DIFFERENTIAL.**

While the Commission has held that rates on lower grade oil are somewhat lower than on the higher grade oils, rate found to be on a low basis and any differential by a reduction in the rate on the crude oils. *Sta. General*, as Agent, 105.

DIFFERENTIAL—Continued.

Adjustment of rates on corn sirup, or glucose, unmixed, in tank-cars, from Chicago, Ill., and other points, to Dothan, Ala., found unduly prejudicial to that point and unduly preferential of New Orleans, La., to extent that rates to Dothan exceed, by more than 10 cents, the rates to New Orleans. *Montgomery Chamber of Commerce v. Director General*, as Agent, 206.

Transcontinental rates on wire rods of No. 8 gauge or heavier, found unduly prejudicial to extent it exceeds 90 per cent of the rate on manufactured galvanized wire, wire netting, and wire rope. Reparation denied. *Edwards v. Director General*, as Agent, 258.

Rate legally applicable on manganese ore from Phillipsburg, Mont., to Johnstown, Pa., found unduly prejudicial to Johnstown to extent it exceeded by more than 30 cents per net ton the rates to Pittsburgh, Pa. Reparation denied. *Cambria Steel Co. v. Director General*, as Agent, 459 (464).

No tariff authority appeared for rates charged on two tank-car loads of oil, billed as solar oil. Shipments found to consist of gas oil, and rates applicable thereon found unreasonable to extent they exceeded by more than 2.5 cents the rates on fuel oil. Adjustment of charges directed. *Acme Cement Plaster Co. v. Director General*, as Agent, 659.

Joint rate on coal from Missionfield to Miford, Ill., effective June 27, 1919, found unreasonable during remainder of period of federal control, to extent it exceeded a rate 8 cents less than to Chicago, Ill., a farther distant point, which basis had always been maintained prior to the establishment of the joint rate. Reparation awarded. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

DIRECTOR GENERAL. See **FEDERAL CONTROL ACT.**

DISCRIMINATION. See also **PREFERENCES AND PREJUDICES.**

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 53 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *Iowa Passenger Fares and Charges*, 55; *Montana Rates and Fares*, 61; *Ohio Rates, Fares, and Charges*, 78; *Intrastate Rates Within Illinois*, 92; *Michigan Passenger Fares*, 245; *South Carolina Fares and Charges*, 290; *Nebraska Rates, Fares and Charges*, 305; *Indiana Rates, Fares, and Charges*, 337; *North Carolina Fares and Charges*, 362; *Utah Rates, Fares, and Charges*, 388; *Intrastate Rates within the State of Texas*, 421; *Louisiana Rates, Fares, and Charges*, 467; *Georgia Rates, Fares, and Charges*, 527; *Florida Rates, Fares, and Charges*, 551; *Nevada Rates, Fares, and Charges*, 623.

Intrastate distance rates on cattle and hogs within Illinois, lower than the corresponding interstate distance rates from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Reasonable distance scale prescribed. *Indianapolis Chamber of Commerce v. C., C., C. & St. L. Ry. Co.*, 67 (76).

Different intrastate mixed carload rule on cattle and hogs within Illinois, which results in lower charges than from application of interstate rule applying on traffic from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Interstate rule prescribed. *Id.* (77).

DISCRIMINATION—Continued.

The law requires the Commission to fix rates, fares, and charges so that carriers shall earn a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and to the extent that intrastate rates, fares, and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. *South Carolina Fares and Charges*, 290 (297).

Whether intrastate charges are unjustly discriminatory against interstate commerce does not depend upon the amount of revenue involved. *Id.* (298).

Intrastate rates on coal and ore within the state of Utah not found unreasonably preferential, unduly prejudicial, or unjustly discriminatory against interstate commerce. *Utah Rates, Fares, and Charges*, 388 (395).

If the integrity of interstate rates is to be maintained and the fundamental purposes of the interstate commerce act carried out, regulation by the state commissions of intrastate rates can not be exercised in such a way as to result in undue prejudice against interstate shippers or unjust discrimination against interstate commerce. *Georgia Rates, Fares, and Charges*, 527 (534).

Refusal of defendants to absorb switching charges of the Michigan R. R., on traffic to or from complainants' plants on that road at Grand Rapids, Mich., while contemporaneously absorbing one another's switching charges on like traffic to or from industries located on their own tracks at that point under substantially similar circumstances and conditions, found to be unjustly discriminatory in violation of section 2. Reparation denied. *National Spring & Wire Co. v. Director General*, as Agent, 564.

Failure of defendants to perform service of switching and spotting between trunk line and loading and unloading points within complainant's plant at Brackenridge, Pa., in the Pittsburgh rate district, or to make an allowance covering the cost of that service, while performing such services without additional charge or making allowances to competitors similarly situated in the same district, found to result in unjust discrimination in violation of section 2. *Allegheny Steel Co. v. Director General*, as Agent, 575.

Intrastate passenger fares of the Wheeling Traction Co., an electric line, between certain points in the state of Ohio, lower than the corresponding interstate fares between the same Ohio points and certain points in West Virginia, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. *Beall v. W. T. Co.*, 600.

DISTANCE RATES.

Table of distance class rates applicable on intrastate traffic in Alabama as compared with rates on interstate traffic for distances up to 200 miles. Appendixes 1 and 2. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (7, 8, 28, 29).

On cattle and hogs from defined territory in Illinois to Indianapolis, Ind., established following *Eastern Live Stock Case*, 36 I. C. C., 675, and authorized to be increased under *Increased Rates, 1920*, 58 I. C. C., 220, found just and reasonable. *Indianapolis Chamber of Commerce v. C. C. & St. L. Ry. Co.*, 67 (75-76).

DISTANCE RATES—Continued.

Table showing interstate scale of rates in c. f. a. territory on cattle and hogs, both single and double deck, as compared with the Illinois state scale, for distances up to 300 miles. Id. (69).

Intrastate distance rates on cattle and hogs within Illinois, lower than the corresponding interstate distance rates from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Reasonable distance scale prescribed. Id. (76).

On coal originating at Missionfield, Ill., factor of combination intrastate rate from Bronson to Jamaica, Ill., found unreasonable during federal control to extent it exceeded a distance scale rate of 70 cents maintained in Illinois and Indiana for distances of 10 miles or less. Reparation awarded. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

Rates on anthracite and bituminous coal from Duluth and Superior, Wis., and other points at the head of the lakes taking same rates, to destinations in Minnesota, North Dakota, and South Dakota east of the Missouri River, found unreasonable to extent they exceed distance scale of rates herein prescribed. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 687.

DISTURBANCE OF ADJUSTMENT.

In original report, 58 I. C. C., 549, the Commission prescribed a relationship of rates for the removal of undue prejudice but due to points of origin being situated in different rate groups different percentage increases were applied following *Increased Rates, 1920*, 58 I. C. C., 220, again creating undue prejudice. Upon further hearing, undue prejudice removed by applying the same percentage of increase from both groups. *Silica Sand Producers' Traffic Asso. of Illinois v. Director General*, 453.

Proposed increased commodity rates on fish oil, in barrels or tank cars, from St. Marys, Ga., to Ohio and Mississippi River crossings and north Atlantic ports, found not justified as the existing relation in rates between competing points in the same territory would be destroyed and St. Marys would be placed at a disadvantage as compared with Fernandina, Fla., and other producing points. *Fish Oil from St. Marys*, 511.

Joint rate on coal from Missionfield to Milford, Ill., effective June 27, 1919, found unreasonable during remainder of period of federal control, to extent it exceeded a rate 8 cents less than to Chicago, Ill., a farther distant point, which basis had always been maintained prior to the establishment of the joint rate. Reparation awarded. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

International rates established by the Director General on June 25, 1918, under general order No. 28, between points in western Canada and St. Paul, Minn., disrupted the relationship existing with Canadian rates which was subsequently restored by reducing the international rates. *Held*: Rates originally established and now maintained were and are for purpose of enabling carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines. Rates during interim not unreasonable. *Swift & Co. v. C. N. Rys.*, 747.

DIVERSION. See RECONSIGNMENT.

DIVISIONS.

Because of dispute as to divisions, carrier proposed to cancel provisions for absorption of switching charges at Oeur d'Alene, Idaho, on lumber and articles taking same rates originating on the Northern Pacific at that point, resulting in increased through charges. *Held*: Cancellation not justified. Absorption of Switching Charges at Oeur d'Alene, 273.

DIVISIONS—Continued.

Carrier sought to justify increased rate brought about by cancellation of absorption of switching charges on ground that it has been its policy not to divide its through rates with independent roads but to apply its rates to the junction points with such independent lines. *Held*: This policy tends to restrict the markets and was condemned in *Hughes Creek Coal Co.*, 29 I. C. C., 671, 676, and in other cases. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 768 (767).

DOMESTIC RATES. *See* EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.

DOUBLE INCREASE.

Combination rate, both factors of which were increased under *Fifteen Per Cent Case*, 45 I. C. C., 308, and general order No. 28, found unreasonable to extent it exceeded lower rate subsequently established, equivalent to the through rate plus those increases. Reparation awarded. *Nason Coal Co. v. Director General*, as Agent, 214.

Where rates are based on combinations and tariff governing one factor contained provision for the application of a flat increase to the through rate, carriers parties to the tariff governing the other factor which contained no similar provision and who concurred in the tariff containing such provision are bound by the rule which prescribed a specific method for constructing combination rates on through shipments. *Indian Refining Co. v. Director General*, as Agent, 488 (489).

DUTY OF CARRIER.

It is the duty of carriers to publish regulations protecting the minimum applicable in connection the car ordered, subject to reasonable provisions for the protection of the carriers' equipment. *See also Rule 66 of Tariff Circular 18-A*. Minimum Weight on Grain, 318 (820).

DUTY OF COMMISSION.

Request of carrier that it be not required to amend its tariffs, found by the Commission to be violative of section 4 of the act, until the future status of a road, the operation of which was ordered discontinued by a United States district court, is determined, *Held*: Commission can not sanction the continued publication of rates which are clearly at variance with the provisions of the law. *Perry County Coal Corp. v. Director General*, 52 (54).

EARNINGS. *See also* REVENUE.

Poultry: Table of comparative car-mile and ton-mile earnings on live and dressed poultry from representative shipping points to Hoboken, N. J. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284 (287).

ELECTRIC LINES.

Intrastate passenger fares of the Wheeling Traction Co. between certain points in the state of Ohio lower than the corresponding interstate fares between the same Ohio points and certain points in West Virginia, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. *Beall v. W. T. Co.*, 900.

Considered separately the Steubenville & Wheeling Traction Company's rails within the limits of Steubenville, Mingo Junction, and Brilliant, Ohio, may constitute electric street railways, but the rails between the municipalities constitute an interurban railroad as defined in the Ohio statutes, although designated as an electric street railway in its franchises and articles of incorporation. Neither can that road be said to be a "street electric passenger railway," as that term is used in section 15 of the act. *Id.* (606).

ELECTRIC LINES—Continued.

Facts that the Steubenville & Wheeling Traction Co. was incorporated as an "electric street railroad," that its rails were laid entirely within Ohio, and that for operating reasons no through cars are run or through tickets sold, do not stamp the service it now performs as purely intrastate. Whether it be regarded as a separate legal entity or as a division of the Wheeling Traction Co., which owns all its capital stock, it is an electric railway engaged in interstate transportation and is subject to the Commission's jurisdiction. *Id.* (607).

Separate rate of an electric line, which was one factor of a combination intrastate rate, not passed upon as that carrier was not under federal control. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

Passenger fares of certain electric lines operating from Belleville and East St. Louis, Ill., to St. Louis, Mo., increased by establishment of various fare groups or zones, found not unreasonable, unduly prejudicial, or otherwise unlawful. *Greater Belleville Board of Trade v. El. St. L. & S. Ry. Co.*, 741.

EMBARGO.

Because of an embargo, shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. *George Pottery Co. v. Director General*, as Agent, 372.

Charges applicable on shipments of cotton on which shipper directed compression in transit at a point off the initial carrier's rails, because of an embargo, found unreasonable to extent they exceeded lower charges from more distant points of origin with carrier's privilege of compression at points on its own line, which lower charges were subsequently established from points of origin here involved. Reparation awarded. *Tarver, Steele & Co. v. Director General*, as Agent, 666.

EMERGENCY.

Upon complaint praying for an order requiring carriers to refrain from counting box cars as part of the distributive share of cars furnished mines in time of car shortage. *Held*: Commission without authority to grant prayer as no emergency requiring immediate action found to exist. *Dickinson Fuel Co. v. C. & O. Ry. Co.*, 815.

ESTIMATED WEIGHT. *See* **WEIGHT.**

EVIDENCE.

Carrier's contention that bills of lading must govern in determining the rate legally applicable, and that shipper can not show by parol evidence that shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading, found to be without merit. *Harris Bros. Co. v. Director General*, as Agent, 428 (490).

EXCESS BAGGAGE. *See* **BAGGAGE.**

EXPORT AND DOMESTIC.

Domestic rate of \$2.475 on frozen meat from South San Francisco, Calif., to New York, N. Y., for export, exceeded lower export rate of \$1.50 contemporaneously in effect, but found unreasonable only in so far as it exceeded \$2 per 100 pounds. Reparation awarded. *Swift & Co. v. Director General*, 1.

EXPORT AND DOMESTIC—Continued.

Director General cancelled export rates under general order No. 28, leaving in effect higher domestic rates. Subsequently export rate established lower than that formerly in effect. *Held*: Facts that rates lower than domestic rates were customary on gasoline, for export, and that lower export rate was subsequently established do not, in and of themselves, constitute a basis for a finding that domestic rate was unreasonable. *Union Petroleum Co. v. Director General*, as Agent, 655 (656).

EXPRESS RATES.

Class rates on oleomargarine, l. c. l., from Kansas City, Kans., to Los Angeles, Calif., exceeded lower commodity rates on butter, which lower rates were subsequently made applicable to oleomargarine. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 663.

FACTOR. See also PROPORTIONAL RATES.

Combination rates on cotton seed from Louisiana points to Newton, Miss., when basing on Rayville, La., found unreasonable in so far as the factors to Rayville exceeded or exceed the distance commodity rates to the so-called oil-mill stations on the Missouri Pacific. Reparation awarded. *Newton Oil Mill v. Director General*, as Agent, 433.

On coal originating at Missionfield, Ill., factors of combination intrastate rates from Bronson to Milford and Chicago, Ill., found not unreasonable during federal control as they were the same as those from mines in the Danville group, Ill., to same destinations. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

Separate rate of an electric line, which was one factor of a combination intrastate rate, not passed upon, as that carrier was not under federal control. *Id.* (685).

On coal originating at Missionfield, Ill., factor of combination intrastate rate from Bronson to Jamaica, Ill., found unreasonable during federal control to extent it exceeded a distance scale rate of 70 cents maintained in Illinois and Indiana for distances of 10 miles or less. Reparation awarded. *Id.* (685).

FARES. See PASSENGER FARES.**FEDERAL CONTROL ACT.**

Jurisdiction assumed by the Commission over demurrage charges on intrastate shipments moving subsequent to December 28, 1917, the date upon which, by proclamation, the President assumed control of the transportation systems. *Mount Hood R. R. Co. v. Director General*, as Agent, 116.

Interplant switching charges for the movement of lime and limestone, increased under general order No. 28 by the Director General and subsequently reduced, found unreasonable to extent they exceeded charges subsequently established. Reparation awarded. *Riverton Lime Co. v. Director General*, as Agent, 123.

Jurisdiction assumed by the Commission over intrastate rates on shipments moving on and after January 1, 1918, on which date, "for the purpose of accounting," the President assumed control of the transportation systems. *Miller v. Director General*, as Agent, 162 (163).

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control, which terminated March 1, 1920. *Miller v. Director General*, 162 (163); *Atlantic Refining Co. v. Director General*, as Agent, 355; *Illif-Bruff Chemical Co. v. Director General*, as Agent, 720 (722).

FEDERAL CONTROL ACT—Continued.

Domestic rate applicable on imported straw braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, not found unreasonable or discriminatory as compared with import rate subsequently established. *American Trading Co. v. Director General*, as Agent, 272.

Per car rates established by the Director General under general order No. 28, on bituminous coal, not found unreasonable as compared with lower per car rates applicable on other commodities or with rates subsequently established. *Atlantic Refining Co. v. Director General*, as Agent, 355.

Fact that in the course of a readjustment lower rates were established by the Director General does not of itself warrant a conclusion that the rates established on June 25, 1918, under general order No. 28, were unreasonable. *Atlantic Refining Co. v. Director General*, as Agent, 355 (356); *Lake Park Refining Co. v. Director General*, as Agent, 381 (383).

Rate charged on petroleum fuel oil, in tank-car loads, found not to have been unreasonable as compared with rate prescribed in *Midcontinent Oil Rates*, 36 I. C. C., 109, plus 25 per cent increase under general order No. 28, or as subsequently readjusted by establishment of flat increase of 4.5 cents, which latter rate is prescribed for the future. *Lake Park Refining Co. v. Director General*, as Agent, 381.

Wage increases, increased prices of material, and other conditions which justified the Director General in increasing the rates under general order No. 28, prevailed in the first six months of 1918 in the same manner and to the same degree as when that order was entered on June 25, 1918. *Id.* (383).

Director General cancelled import rate on copra, leaving in effect higher domestic rate which was subsequently reduced and upon which basis charges were assessed. Later domestic rate again reduced. *Held*: Rate charged found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. *Texas Cotton Seed Crushers' Asso. v. Director General*, as Agent, 465.

Director General cancelled import rate on leaf or unmanufactured tobacco, leaving in effect higher domestic rate, on which basis charges were assessed. Subsequently lower import rate established. *Held*: In view of the circumstances and necessity which impelled the issuance of general order No. 28, rates charged found not unreasonable. *American Tobacco Co. v. Director General*, as Agent, 486 (488).

Practices of the Director General in the distribution of coal cars to mines on the Monongahela and Morgantown & Wheeling railways, found to subject operators of mines on those roads to undue prejudice and disadvantage to extent that the percentage of cars furnished was less than the average percentage furnished mines in the same general coal region on the Pittsburgh & Lake Erie and Pennsylvania railroads. Record held open on question of damages. *Northern West Virginia Coal Asso. v. P. R. R. Co.*, 569.

Orders for cars needed by the Morgantown & Wheeling Ry., were placed with the Monongahela Ry., and by it with the trunk lines. Fact that the Wheeling was not under federal control immaterial, as it was as much dependent upon the connections of the Monongahela for equipment as was the Monongahela itself, and its mines were entitled to equal treatment in the matter of car distribution. *Id.* (569).

60 I. C. C.

FEDERAL CONTROL ACT—Continued.

Director General, without complainant's consent, in compliance with general order No. 1, disregarded routing instructions to promote speed and efficiency, but failed to adjust charges down to basis of the rate in effect via route designated by shipper as authorized by the Commission's order of April 26, 1918. *Held*: Shipments misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 621.

Director General cancelled export rates under general order No. 28, leaving in effect higher domestic rates. Subsequently export rate established lower than that formerly in effect. *Held*: Facts that rates lower than domestic rates were customary on gasoline, for export, and that lower export rate was subsequently established do not, in and of themselves, constitute a basis for a finding that domestic rate was unreasonable. *Union Petroleum Co. v. Director General*, as Agent, 655 (656).

On intrastate traffic, moving during federal control under combination rates, the Commission's jurisdiction is limited to rates over that portion of the haul over lines under federal control. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

Increased rate on fuel oil moving by water from interstate or foreign points, resulting from the substitution of a flat increase of 4.5 cents in lieu of the percentage increase of 25 per cent authorized under general order No. 28, for the rail haul from Tampa and Port Tampa, Fla., to points in the Bone Valley District of Florida, found not unreasonable as the rate from the ports has been, and is, upon a lower basis than maintained elsewhere. *International Agricultural Corp. v. Director General*, as Agent, 726.

Excluding period of federal control as part of the period of limitation in claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, complaint found to have been filed within two years and within the Commission's jurisdiction. *Ryan Fruit Co. v. S. P. Co.*, 733 (736).

International rates established by the Director General on June 25, 1918, under general order No. 28, between points in western Canada and St. Paul, Minn., disrupted the relationship existing with Canadian rates which was subsequently restored by reducing the international rates. *Held*: Rates originally established and now maintained were and are for purpose of enabling carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines. Rates during interim not unreasonable. *Swift & Co. v. C. N. Rys.*, 747.

FILING AND POSTING.

A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the act, applicable to through transportation, and in order to be lawful must be established by publication and filing with the Commission. *Greater Des Moines Committee (Inc.) v. Director General*, 403 (407).

FINDINGS OF COMMISSION. See ORDERS OF COMMISSION.**FLOOD.**

Due to a flood which washed out complainant's tracks and disaligned trestle bridge, cars could not be interchanged with its trunk line section and demurrage accrued under the average agreement. Cars delivered to a shipper for loading or unloading do not cease to be held for those purposes from the fact that the time of holding is by an act of God. Demurrage lawfully assessed. *Mount Hood v. Director General*, as Agent, 116.

FOREIGN COMMERCE.

The Commission has jurisdiction over the rail transportation which takes place wholly within a state on traffic moving to the ports by water from interstate or foreign points of origin. *International Agricultural Corp. v. Director General, as Agent, 728.*

FOSTERING COMMERCE.

Rates on ore from Montana points were increased on June 25, 1918, but were afterwards reduced to approximately the same basis as was previously in effect in order to encourage production at western points at a time when importation was small. *Held:* Such rates, while voluntarily established, can not from the mere fact of their maintenance be held to be reasonable rates. *Cambria Steel Co. v. Director General, as Agent, 459 (464).*

FRANCHISES.

Considered separately the Steubenville & Wheeling Traction Company's rails within the limits of Steubenville, Mingo Junction, and Brilliant, Ohio, may constitute electric street railways, but the rails between the municipalities constitute an interurban railroad as defined in the Ohio statutes, although designated as an electric street railway in its franchises and articles of incorporation. Neither can that road be said to be a "street electric passenger railway" as that term is used in section 15 of the act. *Beall v. W. T. Co., 600 (606).*

FREE TIME. *See DEMURRAGE.***FURTHER HEARING.** *See also SUPPLEMENTAL REPORT.*

Findings in original report, 55 I. C. C., 583, that rates on fertilizer from Mobile, Ala., to points in Louisiana were unreasonable to extent they exceeded lower rate previously in effect and that complainant is entitled to reparation, affirmed on further hearing. *Virginia-Carolina Chemical Co. v. Director General, as Agent, 821.*

In original report, 58 I. C. C., 549, the Commission prescribed a relationship of rates for the removal of undue prejudice, but due to points of origin being situated in different rate groups different percentage increases were applied, following *Increased Rates, 1920*, 58 I. C. C., 220, again creating undue prejudice. Upon further hearing, undue prejudice removed by applying the same percentage of increase from both groups. *Silica Sand Producers' Traffic Asso. of Illinois v. Director General, 453.*

Upon further hearing, finding upon reargument, 57 I. C. C., 339, that application of the same rate on iron and steel articles from Chicago, Ill., Terre Haute and Vincennes, Ind., and Pittsburgh, Pa., to Pacific ports for export is unduly prejudicial to Chicago, Terre Haute, and Vincennes, affirmed, but because of changes in rates made pursuant to *Increased Rates, 1920*, 58 I. C. C., 220, rate from points found prejudiced should be made not less than 9 cents lower than from Pittsburgh. *Inland Steel Co. v. Director General, 640.*

GENERAL ORDERS OF THE DIRECTOR GENERAL. *See FEDERAL CONTROL ACT.***GROUP RATES.**

Combination rates on coal from certain mines in the Belleville district of southwestern Illinois to points in Missouri on the Mississippi River & Bonne Terre Ry. found unreasonable and unduly prejudicial to extent they exceeded joint rates from other mines in the same district served by the Southern Ry. *Perry County Coal Corp. v. Director General, 250.*

60 I. C. C.

GROUP RATES—Continued.

Rates between points located at the extremities of their respective groups not found unreasonable and objection by carriers to a proposed detachment of these particular points of origin and destination from their respective groups held to be well founded. *Empire Refineries (Inc.) v. Director General, as Agent, 379.*

On long-haul traffic, group rates may be more extensive than where short hauls are the rule, yet it does not necessarily follow in instances where a group rate is extended that the subsequent reduction establishes unreasonableness of the rate formerly in effect. *Cambria Steel Co. v. Director General, as Agent, 459 (463).*

Maintenance of a separate switching charge on coal in addition to the group rates from complainant's mine, located in the Castle Gate Group, Utah, while from other mines in the same group rates include the placing of cars at tipples, and switching of cars from the mines, found unreasonable to extent of the added switching charge, and unduly prejudicial to extent that rates from mine of complainant exceed the Castle Gate group rates maintained from the other mines. Reasonable relationship prescribed and reparation awarded. *Lion Coal Co. v. U. Ry. Co., 674.*

Rates on coal from points on the Millers Creek R. R., resulting from the cancellation by the C. & O. Ry. of the absorption of the switching charge of that line, found unreasonable and unduly prejudicial to extent they exceed the rates from the Big Sandy group-5 district. Reparation awarded. *Consolidation Coal Co. v. C. & O. Ry. Co., 763.*

HIGGINSVILLE SWITCH COMPANY.

Found not to be a common carrier subject to the act. *Farmers Fuel Co. v. Director General, as Agent, 715 (718).*

History and description of. *Id. (716).*

IMPORT AND DOMESTIC.

Domestic rate applicable on imported straw braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, not found unreasonable or discriminatory as compared with import rate subsequently established. *American Trading Co. v. Director General, as Agent, 272.*

Following *Procter & Gamble Co.*, 57 I. C. C., 465, domestic and import rates charged on imported copra from the Pacific coast to New Orleans and Baton Rouge, La., found unreasonable to extent they exceeded lower import rate subsequently established. Reparation awarded. *Southport Mill (Ltd.) v. Director General, as Agent, 357.*

Director General cancelled import rate on copra leaving in effect higher domestic rate which was subsequently reduced and upon which basis charges were assessed. Later domestic rate again reduced. *Held:* Rate charged found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. *Texas Cotton Seed Crushers' Asso. v. Director General, as Agent, 465.*

Director General cancelled import rate on leaf or unmanufactured tobacco, leaving in effect higher domestic rate, on which basis charges were assessed. Subsequently lower import rate established. *Held:* In view of the circumstances and necessity which impelled the issuance of general order No. 28, rates charged found not unreasonable. *American Tobacco Co. v. Director General, as Agent, 486 (488).*

60 I. C. C.

IMPORT RATES.

Maintenance of a higher import rate on sisal from New Orleans, La., to Michigan City, Ind., than to Chicago, Ill., not found to result in undue prejudice, as complainant has suffered no loss of business by reason of the advantage enjoyed by its competitor in Chicago, and has found a ready market for all the twine that it has been able to produce. *Fogarty v. I. C. R. R. Co.*, 267.

INBOUND AND OUTBOUND.

The act does not require that in-and-out charges be equalized through all jobbing points. *Ft. Dodge Commercial Club v. Director General*, 224 (227).

INCREASED RATES. See **ADVANCE IN RATES**; **DOUBLE INCREASE**.

INDIRECT ROUTE. See **CIRCUITOUS ROUTES**.

INDUSTRIAL LINES. See also **SHORT LINES**.

Undue preference of the shipper who happens to own an industrial road can not be sanctioned in any guise. *Jones & Laughlin Steel Co. v. Director General*, as Agent, 325 (331).

INDUSTRIAL SWITCHING. See **SWITCHING**.

INTERCHANGE OF TRAFFIC.

Due to a flood which washed out complainant's tracks and disaligned its trestle bridge, cars could not be interchanged with its trunk line connection and demurrage accrued under the average agreement. *Held*: Cars delivered to a shipper for loading or unloading do not cease to be held for those purposes from the fact that the time of holding is extended by an act of God. Demurrage lawfully assessed. *Mount Hood R. R. Co. v. Director General*, as Agent, 116.

INTERCHANGE SWITCHING. See **SWITCHING**.

INTERMEDIATE RATES.

On sulphuric acid moving during federal control from Danville, Ill., to Hoopeston, Ill., rate to Chicago, Ill., assessed under an intermediate rule in the tariff. Lower rate in effect to Peoria, Ill., when moving through Hoopeston, which also applied to intermediate destinations. *Held*: Chicago rate legally applicable, as it was not specifically cancelled when the Peoria rate was first established, but found unreasonable to that extent. *Illiff-Bruff Chemical Co. v. Director General*, as Agent, 720.

INTERPLANT SWITCHING. See **SWITCHING**.

INTERURBAN ROAD.

As defined in the Ohio statutes. *Beall v. W. T. Co.*, 600 (606).

Considered separately, the Steubenville & Wheeling Traction Company's rails within the limits of Steubenville, Mingo Junction, and Brilliant, Ohio, may constitute electric street railways, but the rails between the municipalities constitute an interurban railroad, as defined in the Ohio statutes, although designated as an electric street railway in its franchises and articles of incorporation. Neither can that road be said to be a "street electric passenger railway," as that term is used in section 15 of the act. *Id.* (606).

INTERVENER.

Objection of intervener to the intervention of other parties located at points other than named in the complaint and seeking relief similar to complainant, upon grounds that they sought to broaden the issue, not sustained. *Natchez Chamber of Commerce v. Director General*, 897.

INTRASTATE RATES. See **STATE RATES**.

INTRATERMINAL RATES.

Intrastate distance rates charged on hollow clay building tile and cement from North Charleston Port Terminals, S. C., to Charleston, S. C., during federal control, found illegal and unreasonable to extent they exceeded the intraterminal rate contemporaneously in effect on traffic between warehouses, industries, and wharves on the carriers' lines. Reparation awarded. *Condon Baking Co. v. Director General*, as Agent, 149.

ISOLATED SHIPMENT. See SPORADIC MOVEMENT.**ISSUE.**

Objection of intervener to the intervention of other parties located at points other than named in the complaint and seeking relief similar to complainant, upon grounds that they sought to broaden the issue, not sustained. *Natchez Chamber of Commerce v. Director General*, 397.

JENNINGS RAILROAD.

Found to be a common carrier subject to the act. *Griffith v. Jennings*, 232 (236).

History and description of. *Id.* (233.)

JOBBER'S RATES.

The act does not require that in-and-out charges be equalized through all jobbing points. *Ft. Dodge Commercial Club v. Director General*, 224 (227).

JOBGING POINTS.

Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (11).

JOINT AND SEVERAL LIABILITY. See LIABILITY.**JOINT RATES.**

Prayer for establishment of, from mines on the Higginsville Switch Co., at Higginsville, Mo., to destinations in Missouri and Kansas, denied, as that line found not to be a common carrier subject to the act and the combination rates in effect are not unreasonable, discriminatory or unduly prejudicial. *Farmers Fuel Co. v. Director General*, as Agent, 715.

JUNCTION.

Routing specified by shipper, but no rate or junction point. Legally applicable rate charged found unreasonable to extent it exceeded lower rate subsequently established via route of movement, but in connection with a different junction. Reparation awarded. *Roberts Cotton Oil Co. v. Director General*, as Agent, 139.

JUNK.

Fragments of band-iron baling ties billed as scrap iron found to have consisted of material to be used for making ties and should have been shipped as "Band iron." Commodity did not come within the tariff description of scrap iron because it had value for other than remelting purposes. Charges on "Band iron" basis collected at destination found not unreasonable. *U. S. Importing & Exporting Co. v. Director General*, as Agent, 500.

JURISDICTION.

Assumed by the Commission over demurrage charges on intrastate shipments moving subsequent to December 28, 1917, the date upon which by proclamation the President assumed control of the transportation systems. *Mount Hood R. R. Co. v. Director General*, as Agent, 116.

JURISDICTION—Continued.

The Commission is without power to order refund of war taxes. *Riverton Lime Co. (Inc.) v. Director General*, as Agent, 128 (124); *Chapin-Sacks Mfg. Co. v. Director General*, as Agent, 145 (146); *Best-Clymer Mfg. Co. v. Director General*, as Agent, 153 (154); *Jones & Laughlin Steel Co. v. Director General*, as Agent, 325 (332); *Southport Mill (Ltd.) v. Director General*, as Agent, 357 (358); *Standard Oil Co. (Ky.) v. Director General*, as Agent, 449 (450); *Texas Cotton Seed Crushers' Asso. v. Director General*, as Agent, 465 (466).

Assumed by the Commission over intrastate rates on shipments moving on and after January 1, 1918, on which date "for the purpose of accounting," the President assumed control of the transportation systems. *Miller v. Director General*, as Agent, 162 (163).

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control which terminated March 1, 1920. *Miller v. Director General*, 162 (165); *Atlantic Refining Co. v. Director General*, as Agent, 355; *Illiff-Bruff Chemical Co. v. Director General*, as Agent, 720 (722).

Commission without authority to require carriers to refrain from counting box cars as part of the distributive share of cars furnished mines unless it is first found that shortage of equipment, congestion of traffic, or other emergency requiring immediate action, exists. *Dickinson Fuel Co. v. C. & O. Ry. Co.*, 315 (317).

The manifest intent of Congress was to repose in the Commission authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any undue, unreasonable, or unjust discrimination. *Intrastate Rates within the State of Texas*, 421 (426).

Facts that the Steubenville & Wheeling Traction Co., was incorporated as an "electric street railroad," that its rails were laid entirely within Ohio, and that for operating reasons no through cars are run or through tickets sold, do not stamp the service it now performs as purely intrastate. Whether it be regarded as a separate legal entity, or as a division of the Wheeling Traction Co., which owns all its capital stock, it is an electric railway engaged in interstate transportation and is subject to the Commission's jurisdiction. *Beall v. W. T. Co.*, 600 (607).

On intrastate traffic, moving during federal control under combination rates, the Commission's jurisdiction is limited to rates over that portion of the haul over lines under federal control. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

The Commission has jurisdiction over the rail transportation which takes place wholly within a state on traffic moving to the ports by water from interstate or foreign points of origin. *International Agricultural Corp. v. Director General*, as Agent, 726.

Excluding period of federal control as part of the period of limitation in claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, complaint found to have been filed within two years and within the Commission's jurisdiction. *Ryan Fruit Co. v. S. P. Co.*, 733 (736).

KNOCKED DOWN. See SET UP AND KNOCKED DOWN.

LAWFUL RATES.

Request of carrier that it be not required to amend its tariffs, found by the Commission to be violative of section 4 of the act, until the future status of a road, the operation of which was ordered discontinued by a United States district court, is determined, *Held*: Commission can not sanction the continued publication of rates which are clearly at variance with the provisions of the law. *Perry County Coal Corp. v. Director General*, 52 (54).

LEGAL RATES. See also OVERCHARGES.

Shipments of long logs moving intrastate found to consist of "logs," and lumber rates assessed on theory that they constituted timbers, found illegal. Certain shipments found undercharged and others overcharged, and rates applicable on shipments moving after January 18, 1919, found unreasonable to extent they exceeded 5 cents per 100 pounds, prescribed on June 25, 1918. Reparation awarded. *Miller v. Director General*, as Agent, 162.

Rates charged on second-hand wrought iron pipe, from Cleveland and Kiefer, Okla., to Tiffin, Tex., exceeded lower rate from Coffeyville and Baxter, Kans., which lower rates were legally applicable from Cleveland and Kiefer under an intermediate application provision in defendants' tariffs. Refund of overcharges directed. *Prairie Pipe Line Co. v. Director General*, as Agent, 263.

Carrier's contention that bills of lading must govern in determining the rate legally applicable, and that shipper can not show by parol evidence that shipments were of something other than as described by it or its agent in the transportation contract contained in the bills of lading, found to be without merit. *Harris Bros. Co. v. Director General*, as Agent, 428 (430).

Fragments of band-iron baling ties billed as scrap iron found to have consisted of material to be used for making ties and should have been shipped as "Band iron." Commodity did not come within the tariff description of scrap iron because it had value for other than remelting purposes. Charges on "Band iron" basis collected at destination found not unreasonable. *U. S. Importing & Exporting Co. v. Director General*, as Agent, 500.

On shipments unloaded by consignee or at consignee's request by the carrier, charges under a tariff rule providing for assessment of storage charges on basis of demurrage rules while shipments in cars and storage charges after unloading found legally applicable. *Harlem Feed & Grocery Co. v. Director General*, as Agent, 652.

No tariff authority appeared for rates charged on two tank-car loads of oil, billed as solar oil. Shipments found to consist of gas oil, and rates applicable thereon found unreasonable to extent they exceeded by more than 2.5 cents the rates on fuel oil. Adjustment of charges directed. *Acme Cement Plaster Co. v. Director General*, as Agent, 659.

On sulphuric acid moving during federal control from Danville, Ill., to Hoopeston, Ill., rate to Chicago, Ill., assessed under an intermediate rule in the tariff. Lower rate in effect to Peoria, Ill., when moving through Hoopeston, which also applied to intermediate destinations. *Held*: Chicago rate legally applicable, as it was not specifically canceled when the Peoria rate was first established, but found unreasonable to that extent. Reparation awarded. *Illiff-Bruff Chemical Co. v. Director General*, as Agent, 720.

LEGAL RATES—Continued.

Rate once lawfully established continues to be the legal rate until legally canceled. Subsequent tariff naming new rates without canceling previous rate can not carry new rates into lawful effect. *Id.* (721).

LIABILITY.

Where an unreasonable rate has been collected, the liability of the parties is joint and several and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service were not made parties defendant. *Gloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595 (598).

LIMITATION OF ACTION.

Excluding period of federal control as part of the period of limitation in claims for reparation for causes of action arising prior thereto, as provided under section 206 (f) of the transportation act, 1920, complaint found to have been filed within two years and within the Commission's jurisdiction. *Ryan Fruit Co. v. S. P. Co.*, 733 (736).

LINE HAUL.

Respondent, having acquired certain trackage rights, proposes to perform the entire transportation service without increase in charge to shippers. Proposed change in routing of coal from Kentucky and Tennessee mines on the L. & N. R. to Atlanta, Ga., beyond Cartersville, Ga., found justified. Coal to Atlanta, Ga., via Cartersville and W. & A. Ry., 509.

LOADING.**Hay :**

Contention that dimensions of 34, 35, and 36 foot cars are such that a sufficient number of bales can not be loaded to make the required minimum weight not sustained. *Hawkins v. O. S. L. R. R. Co.*, 188.

Density of compression and condition of hay when baled has more to do with the possible loading than anything else. *Id.* (189).

Pipe, culvert: Average loading of, is approximately 47,000 pounds. *Galion Iron Works & Mfg. Co. v. Director General, as Agent*, 515 (518).

Sulphur: Average per-car loading of crude sulphur is in excess of 100,000 pounds; ground or refined sulphur approximately 65,000 pounds. Sulphur and Brimstone from Louisiana and Texas, 579 (580).

LOADING AND UNLOADING.

Cars delivered to a shipper for, do not cease to be held for those purposes from the fact that the time of holding is extended by an act of God. *Mount Hood R. R. Co. v. Director General, as Agent*, 116 (118).

Practice of certain carriers in loading and unloading c. l. freight, other than export and import, into or out of warehouses at New Orleans, La., without charge, while refusing to perform such service at Natchez and Vicksburg, Miss., and Baton Rouge, La., found to result in undue prejudice. *Natchez Chamber of Commerce v. Director General*, 897.

LOCAL RATES. See also COMBINATION RATES.

Proposed increased local rates on grain and grain products, from St. Louis, Mo., Peoria and Chicago, Ill., St. Paul, Minn., and other points to Kansas City, Mo.-Kans., found justified. Grain and Grain Products, Chicago to Kansas City, 128.

Proposed increased local and proportional rates on grain and grain products from Mississippi and Missouri River crossings and related points to destinations in Arkansas, not found justified, with exception of increased local rates from Kansas City, Mo., and points taking same or related rates, to Arkansas City and Eudora, Ark. Grain from River Crossings to Arkansas, 593.

LOCATION. *See* ADVANTAGES AND DISADVANTAGES.LONG AND SHORT HAUL. *See also* SECTION 4.

- Alabama points: Authority to continue lower rates on glucose, in tank cars, from certain Illinois, Indiana, and Iowa points to New Orleans, La., lower than to Birmingham, Montgomery, Dothan, and other intermediate points, denied. *Montgomery Chamber of Commerce v. Director General*, as Agent, 203 (209).
- Alpena, S. Dak.: Application for authority to continue rates on sugar from New Orleans, La., to Wolsey, S. Dak., lower than on like traffic to Alpena and other intermediate points, denied. *Everybody's Mercantile Co. v. C. & N. W. Ry. Co.*, 143.
- Bowling Green, Ky.: Authority to charge rates on crude petroleum, on interstate traffic, from Bowling Green to Louisville, Ky., higher than from farther distant points, denied. *Standard Oil Co. (Ky.) v. Director General*, as Agent, 449 (450).
- Carlisle, S. C.: Authority to charge rates on cottonseed oil from Clinton, S. C., to Port Ivory, N. Y., lower than from Carlisle and other intermediate points, denied. *Procter & Gamble Mfg. Co. v. Director General*, as Agent, 447 (448).
- Crichton, La.: Rate on crude oils from, to Louisville, Ky., increased without a corresponding increase from Shreveport, La., a farther distant point. *Held*: Departure from fourth section of the act created without the Commission's authority found unlawful and should be corrected immediately. *Standard Oil Co. v. Director General*, as Agent, 105 (109).
- Clayton, Miss.: Authority to continue rates on petroleum and products from Lawrenceville, Ill., to Helena, Ark., and Greenville and other Mississippi points, lower than to Clayton and other intermediate points, denied. *Indian Refining Co. v. Director General*, as Agent, 438 (440).
- Coulterville, Ill.: Maintenance of rates on bituminous coal from, to destinations in Missouri, higher than from farther distant mines in the Belleville group, to which Coulterville is intermediate, found to be violative of the fourth section of the act. *Perry County Coal Corp. v. Director General*, 52.
- Hospers, Iowa: Application seeking authority to continue rates on sugar from New Orleans, La., to Sheldon, Iowa, lower than on like traffic to Hospers and other intermediate points, denied. *Everybody's Mercantile Co. v. C. & N. W. Ry. Co.*, 143.
- Midway and Frankfort, Ky.: Maintenance of a rate on glass bottles from Huntington, W. Va., to Louisville, Ky., lower than to Midway and Frankfort, intermediate points, found not justified. *Boldt Glass Co. v. Director General*, as Agent, 495 (498).
- Orange, Tex.: Rates on sulphuric acid, in tank-car loads, from New Orleans, La., to, higher than to Beaumont, Tex., and other farther distant points, unprotected by appropriate application, found unlawful. *Seaboard Oil & Refining Co. of Texas v. Director General*, as Agent, 451 (452).
- Rayville, La.: Authority to continue rates on cotton seed from points on the M. P. R. R., in Louisiana to Newton, Miss., when moving through Rayville and Monroe, La., lower than rates on like traffic from the same or more distant points when interchanged at Rayville, the shorter being included within the longer distance, denied. *Newton Oil Mill v. Director General*, as Agent, 433 (437).

LONG AND SHORT HAUL—Continued.

Salt Lake City, Utah: Authority to continue to charge rates on petroleum and products from California terminals and other points to Cleveland, Ohio, lower than from Salt Lake City and other intermediate points, denied. *Federal Oil & Supply Co. v. Director General*, 185 (187).

LONG ARTICLES.

Shipments of long logs moving intrastate found to consist of "logs" and lumber rates assessed on theory that they constituted timbers, found illegal. Certain shipments found undercharged and others overcharged, and rates applicable on shipments moving after January 18, 1919, found unreasonable to extent they exceeded 5 cents per 100 pounds, prescribed on June 25, 1918. Reparation awarded. *Miller v. Director General*, as Agent, 162.

LONG-HAUL TRAFFIC.

On long-haul traffic, group rates may be more extensive than where short hauls are the rule, yet it does not necessarily follow in instances where a group rate is extended that the subsequent reduction establishes unreasonableness of the rate formerly in effect. *Cambria Steel Co. v. Director General*, as Agent, 459 (468).

LOW RATES. See also DEPRESSED RATES.

Rates on crude fuel and gas oils from Orichton and Shreveport, La., to Louisville, Ky., found to be on a low basis and not unreasonable, discriminatory, or unduly prejudicial. *Standard Oil Co. v. Director General*, as Agent, 105.

MANUFACTURED ARTICLES.

Transcontinental rate on wire rods of No. 8 gauge or heavier, found unduly prejudicial to extent it exceeds 90 per cent of the rate on manufactured galvanized wire, wire netting, and wire rope. Reparation denied. *Edwards v. Director General*, as Agent, 258.

Rates on raw materials should be somewhat lower than on products manufactured therefrom. *Id.* (261).

MARKET COMPETITION. See COMPETITION.**MARKETS.**

Any superiority which one point may have over another as a market may not be urged as a reason for denying a nonprejudicial adjustment of freight rates. *Indianapolis Chamber of Commerce v. C., O., C. & St. L. Ry. Co.*, 67 (73).

To gain access to markets has been evidently the controlling principle of rate making, resulting in adjustments that to a notable extent disregard length of haul. *Utah Rates, Fares, and Charges*, 888 (894).

Carrier sought to justify increased rate brought about by cancellation of absorption of switching charge on ground that it has been its policy not to divide its through rates with independent roads but to apply its rates to the junction points with such independent lines. *Held*: This policy tends to restrict the markets and was condemned in *Hughes Creek Coal Co.*, 29 I. C. C., 671, 676, and in other cases. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 763 (767).

MEASURE OF RATE.

In the absence of other evidence that a commodity rate is unreasonable or unduly prejudicial the fact that it is a moderately greater or less percentage of a corresponding class rate is not sufficient ground for condemning it. *Greater Des Moines Committee (Inc.) v. Director General*, 403 (404).

MILEAGE RATES. *See* DISTANCE RATES.**MILK AND CREAM RATES.**

Certain rates and charges required by state authority to be maintained within the state, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Ohio Rates, Fares, and Charges*, 78; *Intrastate Rates Within Illinois*, 92; *Indiana Rates, Fares, and Charges*, 837; *Louisiana Rates, Fares, and Charges*, 467.

Rules, regulations, and practices, governing the transportation of milk and cream, l. c. l., found unreasonable and unduly prejudicial in that they fail to provide that, on days on which no open-iced car service is provided, milk and cream may be shipped in baggage cars at the rates published for such transportation. *Bryant & Chapman Co. v. Director General, as Agent*, 287.

No tariff provision maintained for exaction of charges on milk and cream based upon minimum number of quarts shipped. Tariff provided that charges be based on actual number of cans transported. Refund of overcharges directed. *Id.* (238).

MILLERS CREEK RAILROAD.

Found to be a common carrier subject to the act. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 763 (768).

History and description of. *Id.* (763-764).

MINE RATINGS. *See* CAR DISTRIBUTION.**MINIMUM CHARGE.**

Minimum charge per passenger required by state authority to be maintained within the state, lower than the corresponding interstate charge authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *South Carolina Fares and Charges*, 290 (306); *North Carolina Fares and Charges*, 362.

Per car rates established by the Director General under general order No. 28, on bituminous coal, not found unreasonable as compared with lower per car rates applicable on other commodities or with those subsequently established. *Atlantic Refining Co. v. Director General, as Agent*, 355.

Minimum c. l. and l. c. l. charge, and minimum class-rate scale, required by state authority to be maintained within the state of Florida, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Florida Rates, Fares, and Charges*, 551.

MINIMUM WEIGHT.

In General: It is the duty of carriers to publish regulations protecting the minimum applicable in connection with the car ordered, subject to reasonable provisions for the protection of equipment. *See also Rule 66 of Tariff Circular 18-A.* Minimum Weight on Grain, 318 (320).

Grain and products: Proposed cancellation of the application to shipments of grain and grain products of a rule protecting the minimum applicable to car ordered when carrier for its own convenience supplies a larger car, found not justified. Minimum Weight on Grain, 318.

60 I. C. C.

MINIMUM WEIGHT—Continued.

Hay: Contention that dimensions of 34, 35, and 36 foot cars are such that a sufficient number of bales can not be loaded to make the required minimum weight, not sustained. *Hawkins v. O. S. L. R. R. Co.*, 188.

Sulphur: Proposed increased rates and reduced minimum on sulphur, ground or refined, from Louisiana and Texas points to various interstate destinations, found justified. Sulphur and Brimstone from Louisiana and Texas, 579.

MISROUTING.

Where complainant specifically routed shipment via higher rated route and record does not establish that objection was made to such routing, or that it was inserted in bill of lading under protest, misrouting not established. *Sparr Fruit Co. v. R. G., E. P. & S. F. R. R. Co.*, 455.

Reparation awarded against carrier who failed to turn shipment over to an intermediate line specified in routing instructions, resulting in shipment being misrouted. *Universal Portland Cement Co. v. B. & L. E. R. R. Co.*, 489.

Director General, without complainant's consent, in compliance with general order No. 1, disregarded routing instructions to promote speed and efficiency but failed to adjust charges down to basis of the rate in effect via route designated by shipper as authorized by the Commission's order of April 26, 1918. *Held:* Shipments misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 621.

Shipment found misrouted where route and rate inserted in bill of lading by shipper and carrier forwarded via route taking higher rate. Reparation awarded. *Union Petroleum Co. v. Director General*, as Agent, 655.

MIXED CARLOADS.

Different intrastate mixed carload rule on cattle and hogs within Illinois, which results in lower charges than from application of interstate rule applying on traffic from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Interstate rule prescribed. *Indianapolis Chamber of Commerce v. C., C. & St. L. Ry. Co.*, 67 (77).

Charges on mixed carloads of seeds, based upon rate and minimum of the highest-rated commodity in the shipment, found legally assessed and not unreasonable. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co.*, 411.

NOTATIONS AND SYMBOLS.

Contention that notation on bill of lading "allow inspection" was authority to direct reconsignment, not sustained as complainant was not a party to the bill of lading. *Northern Brokerage Co. v. Director General*, as Agent, 182 (184).

NOTICE OF ARRIVAL.

Failure of carrier to notify complainant of arrival of a shipment, consigned to itself in care of a warehouse company, in time to comply with tariff requirements necessary to secure the application of joint rate from origin to ultimate destination, resulted in the loss of that privilege. *Held:* As complainant made arrangement with warehouse company for receipt and storage of the shipment, he recognized that company as his agent and delivery to the warehouse constituted delivery to complainant. *Scattergood & Co. v. Director General*, as Agent, 155.

Demurrage accruing due to failure of complainant to give disposition orders in answer to telegraphic request after arrival of car at originally billed destination, found not unreasonable or otherwise unlawful. *Lewry Lumber Co. v. B. & M. R. R.*, 739.

OPEN ICED CARS.

Are those for which the carrier supplies ice in summer and which are stopped en route to pick up l. c. l. shipments of milk and cream. *Bryant & Chapman Co. v. Director General, as Agent, 237 (238).*

OPERATING CONDITIONS. See also TRANSPORTATION CONDITIONS.

Fare maintained by the Seaboard Air Line Ry., for the transportation of passengers over an expensive portion of its line between Charleston, S. C., and Savannah, Ga., in excess of the standard 3.6 cents per mile, found not justified. *South Carolina Fares and Charges, 290 (295-296).*

OPPOSITE DIRECTION. See BOTH DIRECTIONS.**OPTION. See ALTERNATIVE.****ORDERS OF COMMISSION.**

Director General, without complainant's consent, in compliance with general order No. 1, disregarded routing instructions to promote speed and efficiency but failed to adjust charges down to basis of the rate in effect via route designated by shipper as authorized by the Commission's order of April 26, 1918. *Held: Shipments misrouted. Reparation awarded. Du Pont de Nemours & Co. v. Director General, as Agent, 621.*

OUT-OF-LINE HAUL.

Nonexistence of an out-of-line haul is a condition precedent to the right of a shipper to demand reconignment at the through rate. *Northern Brokerage Co. v. Director General, as Agent, 182 (183).*

OVERCHARGES. See also LEGAL RATES.

No tariff provision maintained for exaction of charges on milk and cream based upon minimum number of quarts shipped. Tariff provided that charges be based on actual number of cans transported. Refund of overcharges directed. *Bryant & Chapman Co. v. Director General, as Agent, 237 (238).*

Rates charged on secondhand wrought iron pipe, from Cleveland and Kiefer, Okla., to Tiffin, Tex., exceeded lower rate from Coffeyville and Baxter, Kans., which lower rates were legally applicable from Cleveland and Kiefer under an intermediate application provision in defendants' tariffs. Refund of overcharges directed. *Prairie Pipe Line Co. v. Director General, as Agent, 268.*

Rate charged exceeded rate legally applicable via route of movement. Refund of overcharges directed. *Virginia-Carolina Chemical Co. v. Director General, as Agent, 377 (378).*

On shipments unloaded by consignee or at consignee's request by the carrier, charges under a tariff rule providing for assessment of storage charges on basis of demurrage rules while shipments in cars and storage charges after unloading, found legally applicable. Refund of overcharges directed. *Harlem Feed & Grocery Co. v. Director General, as Agent, 652.*

"OWNER OF PROPERTY TRANSPORTED."

Where complainant at its own expense spotted cars for both itself and another company, a separate legal entity, complainant was not the "owner of the property transported" for the other company within the meaning of section 15 of the act. *United Chemical & Organic Products Co. v. Director General, as Agent, 523 (525-526).*

PARITY OF RATES.

Question raised by complainant at hearing, whether from Oklahoma points to Kansas City, Mo., sudan seed should be accorded rates no higher than on cane seed, as this parity maintained from Kansas and Texas points to same destination, limited by the pleadings and could not be considered. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co., 411 (413).*

PARLOR CARS. *See* **PULLMAN SERVICE.**

PAROL EVIDENCE. *See* **EVIDENCE.**

PARTIES.

Contention that notation on bill of lading "allow inspection" was complainant's authority to direct reconsignment, and that no demurrage should have accrued because he gave such instructions on day shipment arrived, *Held*: Since original instructions called for reconsignment upon basis of through rate and complainant was not a party to the bill of lading, refusal to reconsign found proper and demurrage legally assessed. *Northern Brokerage Co. v. Director General, as Agent*, 182 (184).

Consignor found entitled to reparation where shipment was sold at a price which included the cost of transportation, and freight charges were paid by consignee and deducted from invoice price in settlement with consignor. *Federal Oil & Supply Co. v. Director General*, 185 (187).

Shipments were sold on a delivered basis at a price which included a specific freight rate. While total freight charges were paid by consignee in the first instance, consignor was required to credit consignee in amount that charges collected exceeded rate quoted. *Held*: Consignor entitled to reparation. *Keeler Lumber & Fuel Co. v. Director General, as Agent*, 199 (200).

Following *Darnell Taenzer Case*, 245 U. S., 581, contention that complainants are not entitled to reparation on the ground that transportation charges were included in the selling price of the commodity, found without merit. *Wheeler & Timlin v. Director General, as Agent*, 265 (266).

Where an unreasonable rate has been collected liability of parties is joint and several and the Commission may award reparation against one of the roads which participated in the traffic, even though other roads which performed a part of the service were not made parties defendant. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595 (598).

PARTS.

Fourth-class rate on locomotives, k. d., essential parts of which were missing at time of shipment, found legally applicable as the absence of such parts did not affect the identity of the article transported or destroy its fundamental character from a transportation or tariff standpoint. *Harris Bros. Co. v. Director General, as Agent*, 428.

PASSENGER FARES.

Intrastate passenger fares required by state authority to be maintained within the state, lower than the corresponding interstate fares and charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *Iowa Passenger Fares and Charges*, 55; *Montana Rates and Fares*, 61; *Ohio Rates, Fares, and Charges*, 78; *Michigan Passenger Fares*, 245; *South Carolina Fares and Charges*, 290; *Nebraska Rates, Fares, and Charges*, 305; *Indiana Rates, Fares, and Charges*, 337; *North Carolina Fares and Charges*, 362; *Utah Rates, Fares, and Charges*, 386; *Intrastate Rates Within the State of Texas*, 421; *Louisiana Rates, Fares, and Charges*, 467; *Nevada Rates, Fares, and Charges*, 623.

Uniformity in passenger fares is desirable, but could not be maintained if it should become the policy of the Commission, in fixing fares, to consider as controlling the transportation characteristics of particular lines or portions of lines. *South Carolina Fares and Charges*, 290 (296).

PASSENGER FARES—Continued.

Fare maintained by the Seaboard Air Line Ry., for the transportation of passengers over an expensive portion of its line between Charleston, S. C., and Savannah, Ga., in excess of the standard 3.6 cents per mile, found not justified. *Id.* (295-296).

Minimum charge per passenger required by state authority to be maintained within the state, lower than the corresponding interstate charge authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. *South Carolina Fares and Charges, 290* (303); *North Carolina Fares and Charges, 362*. Cost of service is only one of the elements to be considered in determining what would be a proper relationship between intrastate and interstate fares. If it does cost more to handle one character of passenger traffic than the other it would not necessarily follow that there should be a difference in rates. *Nebraska Rates, Fares, and Charges, 305* (308).

Intrastate passenger fares of the Wheeling Traction Co., an electric line, between certain points in the State of Ohio, lower than the corresponding interstate fares between the same Ohio points and certain points in West Virginia, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. *Beall v. W. T. Co., 600*.

Of certain electric lines operating from Belleville and East St. Louis, Ill., to St. Louis, Mo., increased by establishment of various fare groups or zones, found not unreasonable, unduly prejudicial, or otherwise unlawful. *Greater Belleville Board of Trade v. E. St. L. & S. Ry. Co., 741*.

PAST RATES.

Carrier contended that rate on butter when applied to oleomargarine was unremunerative, but the continued maintenance of the rate on butter justifies the conclusion that carrier regarded it as a compensatory rate, and if compensatory for butter it would have been compensatory for oleomargarine. *Armour & Co. v. Director General, as Agent, 663* (665).

Joint rate on coal from Missionfield to Milford, Ill., effective June 27, 1919, found unreasonable during remainder of period of federal control, to extent it exceeded a rate 8 cents less than to Chicago, Ill., a farther distant point, which basis had always been maintained prior to the establishment of the joint rate. Reparation awarded. *Electric Coal Co. v. Director General, as Agent, 683* (685).

PENALTY.

Failure of carriers to make a conductor's penalty charge, in addition to the regular fare against intrastate passengers who board trains without tickets at points where they might have been purchased, while maintaining such a charge against interstate passengers; or, maintaining lower penalty charges intrastate than interstate, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Penalty charge of not in excess of 15 cents prescribed. *South Carolina Fares and Charges, 290* (303); *North Carolina Fares and Charges, 362*.

Conductor's penalty charge, if reasonable in amount and in the conditions under which it is levied, has been recognized as proper by the Commission and the courts. *South Carolina Fares and Charges, 290* (298).

PER CAR CHARGE. See MINIMUM CHARGE.

PERCENTAGE RATES.

Rate on crude sulphur (brimstone), found unreasonable to extent it exceeded or may exceed 80 per cent of sixth class, prescribed in *Union Sulphur Co.*, 39 I. C. C., 349. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 221.

PLACEMENT. *See also* **CONSTRUCTIVE PLACEMENT**; **SPOTTING CARS.**

Rule approved in *Reconsignment Case*, 47 I. C. C., 590, that further movements of cars within switching limits before being placed for unloading shall be considered a reconsignment, affirmed, and charges accruing thereunder not found unreasonable. *Rockford Lumber & Fuel Co. v. Director General*, as Agent, 217.

Following *Lowry Lumber Co.*, 59 I. C. C., 709, combination rate, plus demurrage and reconsignment charges, found not unreasonable where shipment was placed for unloading at originally billed destination and subsequently reconsigned. *Lowry Lumber Co. v. Director General*, as Agent, 718.

PLEADING AND PRACTICE.

Question raised by complainant at hearing, whether from Oklahoma points to Kansas City, Mo., sudan seed should be accorded rates no higher than on cane seed, as this parity maintained from Kansas and Texas points to same destination, limited by the pleadings and could not be considered. *Rudy-Patrick Seed Co. v. St. L.-S. F. Ry. Co.* 411 (413).

If parties fail to agree as to amount of reparation due under Rule V of the Commission's Rules of Practice, or any other contingency arises by virtue of which further proceedings are required to insure substantial justice, the Commission's power is not impaired by the rule; and when the spirit and purpose of the rule have been defeated neither party may insist upon a literal compliance therewith. *Sloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595 (596).

POINTS OFF LINE.

Charges applicable on shipments of cotton on which shipper directed compression in transit at a point off the initial carrier's rails, because of an embargo, found unreasonable to extent they exceeded lower charges from more distant points of origin with carrier's privilege of compression at points on its own line, which lower charges were subsequently established from points of origin here involved. Reparation awarded. *Tarver, Steele & Co. v. Director General*, as Agent, 666.

POULTRY CARS.

Described. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284 (285).

POULTRY YARDS.

Cost of maintenance at Hoboken, N. J. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284 (287-288).

POWER OF COMMISSION. *See* **JURISDICTION.****PREFERENCES AND PREJUDICES.** *See also* **DISCRIMINATION.****In General:**

Fact that a city is a thriving jobbing center, and in spite of rate differences does business in a territory in competition with other cities, does not deprive it of the right to have rates that are not unduly prejudicial in favor of those competing cities. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (11).

Any superiority which one point may have over another as a market may not be urged as a reason for denying a nonprejudicial adjustment of freight rates. *Indianapolis Chamber of Commerce v. C. & C. & St. L. Ry. Co.*, 67 (73).

PREFERENCES AND PREJUDICES—Continued.

In General—Continued.

Undue prejudice within the meaning of the act can not be said to lie merely in withholding from a given point not similarly affected by transportation conditions rates which are accorded to other points. *Greater Des Moines Committee (Inc.) v. Director General*, 403 (400).

Articles:

Rods, wire: Transcontinental rate on wire rods, of No. 8 gauge or heavier, found unduly prejudicial to extent it exceeds 90 per cent of the rate on galvanized wire, wire netting, and wire rope. Reparation denied. *Edwards v. Director General*, as Agent, 258.

Baggage-Car Service:

Rules, regulations, and practices governing the transportation of milk and cream, l. c. l., found unduly prejudicial in that they fail to provide that, on days on which no open-iced car service is provided, milk and cream may be shipped in baggage cars at the rates published for such transportation. *Bryant & Chapman Co. v. Director General*, as Agent, 237.

Car Distribution:

Unsystematic method of distributing coal cars, during period of car shortage, not shown to have resulted in undue prejudice, but disapproved for the future. *Griffith v. Jennings*, 232.

Practices of the Director General in the distribution of coal cars to mines on the Monongahela, and Morgantown & Wheeling Railways, found to subject operators of mines on those roads to undue prejudice and disadvantage to extent that the percentage of cars furnished was less than the average percentage furnished mines in the same general coal region on the Pittsburgh & Lake Erie and Pennsylvania Railroads. Record held open on question of damages. *Northern West Virginia Coal Asso. v. P. R. R. Co.*, 560.

Localities:

Alliquippa & Southern R. R. points: Rates on traffic to and from plants of complainant and intervener at Woodlawn and West Economy, Pa., served only by the Alliquippa & Southern, but moving in connection with the Pittsburgh & Lake Erie, found unreasonable and unduly prejudicial to extent they exceed line-haul rates to or from Woodlawn. Reparation awarded. *Jones & Laughlin Steel Co. v. Director General*, as Agent, 325.

Belleville district mines: Combination rates on coal from certain mines in the Belleville district of southwestern Illinois, to points in Missouri on the Mississippi River & Bonne Terre Ry., found unreasonable and unduly prejudicial to extent they exceeded joint rates from other mines in the same district served by the Southern Ry. *Perry County Coal Corp. v. Director General*, 250.

Birmingham, Montgomery, and Dothan, Ala.: Adjustment of rates on corn sirup, or glucose, unmixed, in tank cars, from Chicago, Ill., and other points to, found unduly prejudicial to those points and unduly preferential of New Orleans, La., to extent that rates to Birmingham or Montgomery exceed the rates to New Orleans, and to extent rates to Dothan exceed by more than 10 cents the rates to New Orleans. *Montgomery Chamber of Commerce v. Director General*, as Agent, 203.

Cairo, Ill.: Class rates between Cairo and points in southeastern Missouri found to be reasonable but unduly prejudicial to Cairo to extent they exceed by more than reasonable bridge tolls the rates maintained for similar distances between points in southeastern Missouri. *Cairo Asso. of Commerce v. B. C. R. R. Co.*, 519.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Cape Girardeau, Mo.: Rates on crushed gypsum rock from producing points in Oklahoma to, found unduly prejudicial to extent they exceeded rates from same points of origin to either Hannibal or St. Louis, Mo. Reparation denied. *Cape Girardeau Portland Cement Co. v. Director General*, as agent, 269.

Chicago, Ill.: Rates on lumber from, to points in eastern trunk line and c. f. a. territories, found not unreasonable or unjustly discriminatory, but found unduly prejudicial as compared with rates from St. Louis, Mo. Reparation denied. *Hines Lumber Co. v. Director General*, 590.

Chicago, Ill., and Terra Haute and Vincennes, Ind.: Upon further hearing, finding upon reargument, 57 I. C. C., 339, that application of the same rate on iron and steel articles from Chicago, Terre Haute, and Vincennes, and Pittsburgh, Pa., to Pacific ports for export is unduly prejudicial to Chicago, Terre Haute, and Vincennes, affirmed, but because of changes in rates made pursuant to *Increased Rates, 1920*, 58 I. C. C., 220, rate from points found prejudiced should be made not less than 9 cents lower than from Pittsburgh. *Inland Steel Co. v. Director General*, 640.

Des Moines, Iowa: Rates on flaxseed from Minneapolis, St. Paul, and Duluth, Minn., to, found not unreasonable or unduly prejudicial in comparison with depressed rates established because of water competition from same points of origin to Chicago, Ill. *Greater Des Moines Committee (Inc.) v. Director General*, 403.

Fort Dodge, Iowa: Class rates from, to certain points in southwestern Minnesota, eastern South Dakota, and southeastern North Dakota, found unduly prejudicial to Fort Dodge, in so far as they exceed the class rates from Des Moines, Iowa, to same destinations. *Fort Dodge Commercial Club v. Director General*, 224.

Independence, Kans.: Rates on crude petroleum, in tank-car loads, from Plaquemine and New Orleans, La., to, not found unreasonable or unduly prejudicial as compared with rates from same points of origin to Kansas City, Mo. *Standard Asphalt & Refining Co. (Inc.) v. Director General*, as Agent, 384.

Indianapolis, Ind.:

Intrastate distance rates on cattle and hogs within Illinois, lower than the corresponding interstate distance rates from Illinois points to Indianapolis, found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Reasonable distance scale prescribed. *Indianapolis Chamber of Commerce v. C., C. & St. L. Ry. Co.*, 67 (76).

Different intrastate mixed-carload rule on cattle and hogs within Illinois, which results in lower charges than from application of interstate rule applying on traffic from Illinois points to Indianapolis, found to result in undue prejudice to Indianapolis, and unjust discrimination against interstate commerce. Interstate rule prescribed. *Id.* (77).

Johnstown, Pa.: Rate legally applicable on manganese ore from Philipsburg, Mont., to, found unduly prejudicial to extent it exceeded by more than 30 cents per net ton the rates to Pittsburgh, Pa. Reparation denied. *Cambria Steel Co. v. Director General*, as Agent, 459 (464).

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Meridian, Miss.: Class and commodity rates between Meridian and points in Alabama found unreasonable and unduly prejudicial to Meridian and its shippers as compared with class and commodity rates for like distances in Alabama. Reasonable maximum rates between Meridian and points in Alabama prescribed and undue prejudice ordered removed. *Meridian Traffic Bureau v. S. Ry. Co.*, 5.

Michigan City, Ind.: Maintenance of an import rate on sisal from New Orleans, La., to, higher than to Chicago, Ill., not found to result in undue prejudice, as complainant has suffered no loss of business by reason of the advantage enjoyed by its competitor in Chicago, and has found a ready market for all the twine that it has been able to produce. *Fogarty v. I. O. R. R. Co.*, 267.

Millers Creek R. R. points: Rates on coal from points on the Millers Creek R. R., resulting from the cancellation by the C. & O. Ry. of the absorption of the switching charge of that line, found unreasonable and unduly prejudicial to extent they exceed the rates from the Big Sandy group-5 district. Reparation awarded. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 763.

Muskogee, Okla.: Rates on petroleum and products, in tank-car loads, from Warren, Pa., St. Mary's, W. Va., and Chicago Heights, Ill., to, found unduly prejudicial to extent of their excess over rates to Tulsa, Wagoner, and certain other Oklahoma points. Reparation denied. *Oklahoma Producing & Refining Corp. v. Director General*, as Agent, 255.

Natchez and Vicksburg, Miss., and Baton Rouge, La.: Practice of certain carriers in loading and unloading c. l. freight, other than export and import, into or out of warehouses at New Orleans, La., without charge, while refusing to perform such service at Natchez, Vicksburg, and Baton Rouge, found to result in undue prejudice. *Natchez Chamber of Commerce v. Director General*, 397.

Ottawa district, Ill.: In original report, 58 I. C. C., 548, the Commission prescribed a relationship of rates for the removal of undue prejudice against Ottawa district, but due to that district and points found preferred being situated in different rate groups, different percentage increases were applied following *Increased Rates, 1920*, 58 I. C. C., 220, again creating undue prejudice. Upon further hearing, undue prejudice removed by applying the same percentage of increase from both groups. *Silica Sand Producers' Traffic Asso. of Illinois v. Director General*, 453.

Phillipsburg, Mont.: Rate legally applicable on manganese ore from, to Wharton, N. J., found unduly prejudicial to Phillipsburg to extent it exceeded the rate in effect from other Montana points. Reparation denied. *Cambria Steel Co. v. Director General*, as Agent, 459 (464).

Westport, Mo.: Upon further consideration of original report, 58 I. C. C., 97, and in view of the Commission's findings in 59 I. C. C., 404, order for removal of undue prejudice entered, requiring establishment of rates on interstate shipments of various commodities to Westport, in connection with the Westport belt, which shall not exceed rates on like traffic to Kansas City, Mo.-Kans., switching district, or to Westport in connection with the Strang line. *Badger Lumber Co. v. A., T. & S. F. Ry. Co.*, 273.

PREFERENCES AND PREJUDICES—Continued.

Localities—Continued.

Wichita, Kans.:

Rates on paper tablets from St. Joseph, Mo., to, not found unreasonable or unduly prejudicial in comparison with rates from same point of origin to Salina, Kans. Wichita Board of Trade v. Director General, as Agent, 359.

Rates on horses and mules from, to points in Arkansas, Louisiana, and Texas, found unduly prejudicial to extent they exceed rates on like traffic from Kansas City, Mo., to same destinations; and to Memphis, Tenn., to extent they exceed rates in effect from Kansas City by more than \$10 per standard car, with rates on larger cars in proportion. Reparation awarded on certain shipments. Wichita Board of Commerce v. Director General, as Agent, 536.

Persons:

Undue preference of the shipper who happens to own an industrial road can not be sanctioned in any guise. Jones & Laughlin Steel Co. v. Director General, as Agent, 325 (331).

Maintenance of a separate switching charge on coal in addition to the group rates from complainant's mine located in the Castle Gate group, Utah, while from other mines in the same group rates include the placing of cars at tipples, and switching of cars from the mines, found unreasonable to extent of the added switching charge, and unduly prejudicial to extent that rates from mine of complainant exceed the Castle Gate group rates maintained from the other mines. Reasonable relationship prescribed and reparation awarded. Lion Coal Co. v. U. Ry. Co., 674.

Spotting Cars:

Refusal of defendant to grant an allowance to complainant for cost of spotting found to have resulted in unreasonable and unduly prejudicial charges in view of the fact that tariffs contemplated delivery to, and taking of cars from, places of unloading and loading at industries along defendant's line. Reparation awarded. United Chemical & Organic Products Co. v. Director General, as Agent, 523.

Failure of defendants to spot cars within complainant's plant at Arlington, Staten Island, N. Y., beyond the established interchange tracks or to make an allowance to complainants for performing that service with their own facilities not shown unreasonable or unduly prejudicial by reason of fact that such services or allowances were performed or made at other industries in the same rate district and elsewhere. Downey Ship Building Corp. v. S. I. R. T. Ry. Co., 543.

State and Interstate:

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. Iowa Passenger Fares and Charges, 55; Montana Rates and Fares, 61; Ohio Rates, Fares, and Charges, 78; Intrastate Rates Within Illinois, 92; Michigan Passenger Fares, 245; South Carolina Fares and Charges, 290; Nebraska Rates, Fares, and Charges, 305; Indiana

PREFERENCES AND PREJUDICES—Continued.

State and Interstate—Continued.

Rates, Fares, and Charges, 337; North Carolina Fares and Charges, 363; Utah Rates, Fares, and Charges, 388; Intrastate Rates within the State of Texas, 421; Louisiana Rates, Fares, and Charges, 467; Georgia Rates, Fares, and Charges, 527; Florida Rates, Fares, and Charges, 551; Nevada Rates, Fares, and Charges, 623.

Intrastate rates on coal and ore within the state of Utah found not unreasonably preferential, unduly prejudicial, or unjustly discriminatory against interstate commerce. Utah Rates, Fares, and Charges, 388 (395).

While there is no interstate commerce in sugar cane between points in Louisiana and points in other states, it seems unjust that interstate commerce and shippers should be required to forego the use of needed equipment in order that this particular traffic may be accorded a preference or be penalized through higher interstate rates to meet a deficiency in revenue growing out of the preferred treatment accorded this particular class of intrastate traffic and shippers. Louisiana Rates, Fares, and Charges, 467 (476).

If the integrity of interstate rates is to be maintained and the fundamental purposes of the interstate commerce act carried out, regulation by the state commissions of intrastate rates can not be exercised in such a way as to result in undue prejudice against interstate shippers or unjust discrimination against interstate commerce. Georgia Rates, Fares, and Charges, 527 (534).

Intrastate passenger fares of the Wheeling Traction Co., an electric line, between certain points in the state of Ohio, lower than the corresponding interstate fares between the same Ohio points and certain points in West Virginia, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. Beall v. W. T. Co., 600.

Rates on anthracite and bituminous coal from Duluth and Superior, Wis., and other points at the head of the lakes taking same rates, to destinations in Minnesota, South Dakota, and North Dakota, found unduly prejudicial to extent they exceed the rates in effect for intrastate transportation of like traffic from Duluth to points in Minnesota for like distances, or to the extent they are relatively higher, distance considered, than the rates in effect on such intrastate traffic. Holmes & Hallowell v. G. N. Ry. Co., 637.

PROFIT.

In the establishment of rates on a single commodity, the fact that the carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes the bulk of the traffic transported. Holmes & Hallowell Co. v. G. N. Ry. Co., 637 (702).

PROOF. See also BURDEN OF PROOF.

Shipments made subsequent to hearing authorized to be included in reparation statement under Rule V of the Commission's Rules of Practice if accompanied by proof in the form of an affidavit that shipments were made and charges were paid and borne by complainants, with understanding that if defendants object they may request a further hearing with respect thereto. American Fork & Hoe Co. v. St. L. & S. F. R. R. Co., 85 (90).

PROOF—Continued.

Mere comparative statement of charges unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that charges at a given point are unreasonable. *Holly Ridge Lumber Co. v. Director General*, as Agent, 121 (122).

Proposed addition of a switching charge to group rates found not to have been justified, because the resulting increase in the through rates, which is what the shipper is interested in, has not been justified, and the mere acquiescence of shippers therein does not afford sufficient justification therefor. *Lion Coal Co. v. U. Ry. Co.*, 674 (681).

PROPORTIONAL RATES. See also FACTOR.

Are nothing more or less than separately established rates, as that phrase is used in section 6 of the act, applicable to through transportation, and in order to be lawful must be established, within the meaning of section 6, by publication and filing with the Commission. *Greater Des Moines Committee (Inc.) v. Director General*, 403 (407).

Proposed increased local and proportional rates on grain and grain products from Mississippi and Missouri River crossings and related points to destinations in Arkansas found not justified, with exception of increased local rates from Kansas City, Mo., and points taking same or related rates, to Arkansas City and Eudora, Ark. Grain from River Crossings to Arkansas, 586.

PULLMAN SERVICE.

Intrastate charges for occupancy of space by passengers in sleeping and parlor cars, required by state authority to be maintained within the state, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate passengers, unduly prejudicial to interstate passengers, and unjustly discriminatory against interstate commerce. *Iowa Passenger Fares and Charges*, 55; *Montana Rates and Fares*, 61; *Ohio Rates, Fares, and Charges*, 78; *Michigan Passenger Fares*, 245; *Indiana Rates, Fares, and Charges*, 337; *Intrastate Rates within the State of Texas*, 421; *Louisiana Rates, Fares, and Charges*, 467; *Nevada Rates, Fares, and Charges*, 623.

RAIL AND WATER. See WATER AND RAIL.**RATE COMPARISONS.**

Mere comparative statement of charges unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that charges at a given point are unreasonable. *Holly Ridge Lumber Co. v. Director General*, as Agent, 121 (122).

RATE MAKING.

To gain access to markets has been evidently the controlling principle of rate making, resulting in adjustments that to a notable extent disregard length of haul. *Utah Rates, Fares, and Charges*, 388 (394).

Cost of service is not the only element entering into the making of rates. *American Tobacco Co. v. Director General*, as Agent, 486 (488).

In the establishment of rates on a single commodity the fact that the carriers are operating at a loss or on a narrow margin of profit should not be given too much weight, unless it clearly appears that the particular commodity constitutes the bulk of the traffic transported. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 687 (702).

REARGUMENT. See FURTHER HEARING; SUPPLEMENTAL REPORT.**REASONABLENESS OF RATE. See MEASURE OF RATE.**

RECIPROCAL SWITCHING.

A reciprocal switching arrangement between certain carriers does not justify their refusal to absorb the switching charges of another carrier, notwithstanding the smaller volume of traffic of the latter, if in fact unjust discrimination or undue prejudice is shown to result. *National Spring & Wire Co. v. Director General, as Agent, 564 (565).*

RECONSIGNMENT.

Instructions were received after shipment passed last point at which reconsignment could be effected at joint rate, necessitating back haul to a point not on a through route or via which joint rate applied to effect reconsignment. *Held:* As service required was analogous to that required for two local shipments, combination rates charged found not unreasonable. *Northern Brokerage Co. v. Director General, as Agent, 182.*

The through rate can not be protected where reconsignment is effected at a point not on a through route to which the rate applied or where a back haul becomes necessary, except under special tariff provisions. *Id. (183).*

Nonexistence of an out-of-line haul is a condition precedent to the right of a shipper to demand reconsignment at the through rate. *Id. (183).*

Contention that notation on bill of lading "allow inspection" was complainant's authority to direct reconsignment, and that no demurrage should have accrued because he gave such instructions on day shipment arrived. *Held:* Since original instructions called for reconsignment upon basis of through rate and complainant was not a party to the bill of lading, refusal to reconsign found proper and demurrage legally assessed. *Id. (184).*

Rule approved in *Reconsignment Case*, 47 I. C. C., 590, that further movements of cars within switching limits before being placed for unloading shall be considered as reconsignments, affirmed, and charges accruing thereunder not found unreasonable. *Rockford Lumber & Fuel Co. v. Director General, as Agent, 217.*

Because of an embargo shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. *George Pottery Co. v. Director General, as Agent, 372.*

Following *Lowry Lumber Co.*, 59 I. C. C., 709, combination rate, plus demurrage and reconsignment charges, found not unreasonable where shipment was placed for unloading at originally billed destination and subsequently reconsigned. *Lowry Lumber Co. v. Director General, as Agent, 718.*

REDUCTION IN RATES.**By Carriers:**

Rate on gas oil, in tank cars, from Cushing, Okla., to Neodesha, Kans., exceeded lower rate from other Oklahoma points, which lower rate was subsequently established from Cushing. Reparation awarded. *Shaffer Oil & Refining Co. v. Director General, as Agent, 110.*

60 I. C. C.

REDUCTION IN RATES—Continued.**By Carriers—Continued.**

Interplant switching charges for the movement of lime and limestone, increased under general order No. 28, by the Director General, and subsequently reduced, found unreasonable to extent they exceeded subsequently established charges. Reparation awarded. *Riverton Lime Co. (Inc.) v. Director General*, as Agent, 123.

Fourth-class rate legally applicable on intrastate shipments of sulphuric acid, in tank cars, found not unreasonable as compared with lower commodity rate subsequently established, there being no movement before or since the one here involved. *Midland Refining Co. v. Director General*, as Agent, 125.

Rate on ice from Lancaster, Pa., to Washington, D. C., exceeded lower rate to Potomac Yard and Alexandria, Va., which lower rate was subsequently made applicable to Washington. Reparation awarded. *Chapin-Sacks Mfg. Co. v. Director General*, as Agent, 145.

Class rate on apple pomace from Watsonville, Calif., to St. Louis, Mo., exceeded lower commodity rate subsequently established. Reparation awarded. *Best-Clymer Mfg. Co. v. Director General*, as Agent, 153.

Rate legally applicable on steam-cylinder stock from Salt Lake City, Utah, to Cleveland, Ohio, exceeded lower rate from points west thereof, which lower rate was subsequently made applicable from Salt Lake City. Reparation awarded. *Federal Oil & Supply Co. v. Director General*, 185.

Rate on coal from Nokomis, Ill., to Shoplere, Wis., exceeded lower rate subsequently established. Reparation awarded. *Keeler Lumber & Fuel Co. v. Director General*, as Agent, 199.

Combination rate on bituminous coal from Nokomis, Ill., to Union Grove, Wis., exceeded joint rate in effect via other routes, which lower rate was subsequently established via route of movement. Reparation awarded. *Nason Coal Co. v. Director General*, as Agent, 214.

Domestic rate applicable on imported straw braid, assessed as a result of the cancellation by the Director General of all import rates under general order No. 28, not found unreasonable or discriminatory as compared with import rate subsequently established. *American Trading Co. v. Director General*, as Agent, 272.

Showing of a voluntary reduction in rates unsupported by other material and substantial evidence is not conclusive of the unreasonableness of the preexisting rates. *Id.* (274).

Fact that in the course of a readjustment lower rates were subsequently established by the Director General, does not of itself warrant a conclusion that the rates established on June 25, 1918, were unreasonable. *Atlantic Refining Co. v. Director General*, as Agent, 855 (856); *Lake Park Refining Co. v. Director General*, as Agent, 381 (383).

Following *Procter & Gamble Co.*, 57 I. C. C., 465, domestic and import rates charged on imported copra from the Pacific coast to New Orleans and Baton Rouge, La., found unreasonable to extent they exceeded lower import rate subsequently established. Reparation awarded. *Southport Mill (Ltd.) v. Director General*, as Agent, 857.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Sixth-class rate on tankage, dry, from Curtis Bay, Md., to Pinners Point, Va., found not unreasonable as compared with lower commodity rate in effect via other routes and subsequently established via route of movement. *Virginia Carolina Chemical Co. v. Director General*, as Agent, 877.

Class A rate charged on mussel shells from Bowling Green, Ky., to Memphis, Tenn., exceeded lower commodity rate subsequently established. Reparation awarded. *Memphis Freight Bureau, for Blumenfeld Co. (Inc.) v. Director General*, as Agent, 481.

Joint rate legally applicable on petroleum gas oil from Lawrenceville, Ill., to Clayton, Miss., exceeded the subsequently established combination of rates to and from Memphis, Tenn., plus a single flat increase of 4.5 cents authorized by the Director General. Reparation awarded. *Indian Refining Co. v. Director General*, as Agent, 438.

Fifth-class rate on jute and jute butts from East Boston, Mass., to Ludlow Junction, Mass., during federal control, exceeded lower commodity rate subsequently established. Reparation awarded. *Ludlow Mfg. Associates v. Director General*, as Agent, 441.

Rate legally applicable on coal from points in the Kanawha district of West Virginia to Massillon, Ohio, found unreasonable to extent it exceeded lower rate to Cleveland, Ohio, for an average greater distance, which lower rate was subsequently established to Massillon. Reparation awarded. *Central Steel Co. v. C. & O. Ry. Co.*, 443.

Sixth-class rate on cottonseed oil from Carlisle, S. C., to Port Ivory, N. Y., exceeded lower commodity rate from more distant points and subsequently established from Carlisle. Reparation awarded. *Procter & Gamble Mfg. Co. v. Director General*, as Agent, 447.

Fifth-class rates on crude petroleum, in tank-car loads, from Bowling Green, Ky., and Rugby Road, Tenn., to Louisville, Ky., exceeded lower commodity rates subsequently established. Reparation awarded. *Standard Oil Co. (Ky.) v. Director General*, as Agent, 449.

Consignee authorized carrier whose rails reached its plant to turn unroute shipments over to another carrier for delivery, resulting in a three-line haul. *Held*: Combination rate legally applicable not found unreasonable as compared with lower joint rate involving a two-line haul, contemporaneously in effect and subsequently established via route of movement. *Southern Fuel Co. v. Director General*, as Agent, 457.

On long-haul traffic, group rates may be more extensive than where short hauls are the rule, yet it does not necessarily follow in instances where a group rate is extended that the subsequent reduction establishes unreasonableness of the rate formerly in effect. *Cambria Steel Co. v. Director General*, as Agent, 459 (468).

Director General canceled import rate on copra leaving in effect higher domestic rate which was subsequently reduced and upon which basis charges were assessed. Later domestic rate again reduced. *Held*: Rate charged found unreasonable to extent it exceeded lower rate subsequently established. Reparation awarded. *Texas Cotton Seed Crushers' Assn. v. Director General*, as Agent, 465.

REDUCTION IN RATES—Continued.

By Carriers—Continued.

Director General canceled import rate on leaf or unmanufactured tobacco leaving in effect higher domestic rate, on which basis charges were assessed. Subsequently lower import rate established. *Held*: In view of the circumstances and necessity which impelled the issuance of general order No. 28, rates charged found not unreasonable. *American Tobacco Co. v. Director General, as Agent, 486 (488).*

Combination rate legally applicable on a sporadic shipment of bituminous coal from Sugar Creek, Ohio, to Parral, Ohio, during federal control, found not unreasonable as compared with lower joint rate subsequently established. *Robinson Clay Product Co. v. Director General, as Agent, 499.*

Rate on crude dolomite from Union Stone Company, Pa., to Midland, Pa., during federal control, found unreasonable as compared with lower rate to points in the same general territory for comparable distances, which lower rate was subsequently established to Midland. Reparation awarded. *Pittsburgh Crucible Steel Co. v. Director General, as Agent, 503.*

Class rate legally applicable on cotton seed from Somerville, Tenn., to Atlanta, Ga., exceeded lower distance commodity rate subsequently established. Reparation awarded. *Empire Cotton Oil Co. v. Director General, as Agent, 505.*

Rate applicable on sporadic shipments of coal-tar naphtha, in tank-car loads, from Ontario street station to Point Breeze station in Philadelphia, during federal control, exceeding lower rate on petroleum naphtha, which lower rate was subsequently made applicable to coal-tar naphtha. Reparation awarded. *Atlantic Refining Co. v. Director General, as Agent, 506.*

Fifth-class rate on silicate of soda, in tank-car loads, from Rahway, N. J., to Port Ivory, Staten Island, N. Y., exceeded lower commodity rate in effect from Chrome, N. J., and subsequently established from Rahway. Reparation awarded. *Proctor & Gamble Mfg. Co. v. Director General, as Agent, 613.*

Director General canceled export rates under general order No. 28, leaving in effect higher domestic rates. Subsequently export rate established lower than that formerly in effect. *Held*: Facts that rates lower than domestic rates were customary on gasoline, for export, and that lower export rate was subsequently established do not, in and of themselves, constitute a basis for a finding that domestic rate was unreasonable. *Union Petroleum Co. v. Director General, as Agent, 655 (656).*

Express class rates on oleomargarine, l. c. l., from Kansas City, Kans., to Los Angeles, Calif., exceeded lower commodity rates on butter, which lower rates were subsequently made applicable to oleomargarine. Reparation awarded. *Armour & Co. v. Director General, as Agent, 663.*

Charges applicable on shipments of cotton on which shipper directed compression in transit at a point off the initial carrier's rails, because of an embargo, found unreasonable to extent they exceeded lower charges from more distant points of origin with carrier's privilege of compression at points on its own line, which lower charges were subsequently established from points of origin here involved. Reparation awarded. *Tarver, Steele & Co. v. Director General, as Agent, 666.*

REDUCTION IN RATES—Continued.**By Carriers—Continued.**

Sixth-class rate on wood pulp from Port Wentworth, Ga., to Bogalusa, La., exceeded lower joint commodity rate subsequently established. Reparation awarded. *Atlantic Paper & Pulp Corp. v. Director General*, as Agent, 671.

Class rate legally applicable on an emergency intrastate shipment of old rails, moving during federal control, found not unreasonable as compared with lower commodity rate subsequently established after request therefor made. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 723.

Class rate on silica sand from Gulon, Ark., to Sapulpa, Okla., exceeded lower commodity rate in effect from Grays Summit and Pacific, Mo., farther distant points, which lower rate was subsequently established from Gulon. Reparation awarded. *Odell-Daly Material Co. v. Director General*, as Agent, 787.

Class rates legally applicable on isolated shipments of peanut oil from Suffolk, Va., to Macon, Ga., found not unreasonable as compared with lower commodity rate in the opposite direction, which lower rate was subsequently established after request therefor made. *Procter & Gamble Co. v. Director General*, as Agent, 757.

Rate in effect during federal control on silica sand, from Imperial, W. Va., to Pennsboro, W. Va., exceeded lower rate in effect from Dunbar, Pa., which rate was subsequently established from Imperial. Reparation awarded. *Century Glass Sand Co. v. Director General*, as Agent, 759.

Second-class rate on automobile guard rails from Milwaukee, Wis., to Richmond, Va., exceeded fourth-class rate on other automobile parts, which lower rate was subsequently made applicable to guard rails. Reparation awarded. *Crump Co. v. Director General*, as Agent, 761.

By Commission:

Combination rates legally applicable on kerosene oil, in tank-car loads, from Electra and Brownwood, Tex., to Kassel, La., reshipped to Baton Rouge, La., for export, found unreasonable to extent they exceeded lower combination rate herein prescribed. Reparation awarded. *General American Oil Co. v. Director General*, as Agent, 136.

Rate on crude sulphur (brimstone) from New York, N. Y., and Baltimore, Md., to Philadelphia, Pa., and from New York, N. Y., to Paulsboro and Carney's Point, N. J., found unreasonable to extent it exceeded or may exceed 80 per cent of sixth-class, prescribed in *Union Sulphur Co.*, 89 I. C. C., 349. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 221.

Class rates on cotton seed from Charlotte, N. C., to Augusta and Atlanta, Ga., exceeded distance commodity rates maintained between points in North Carolina and Georgia in the same general vicinity. Reasonable rates for the future prescribed from Charlotte to Augusta and reparation awarded. *Buckeye Cotton Oil Co. v. Director General*, as Agent, 281.

Second-class rates on live poultry, c. 1, minimum 18,000 pounds, in official classification territory found unreasonable to extent they exceed third-class, with the same minimum. Reparation denied. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284.

60 I. C. C.

REDUCTION IN RATES—Continued.**By Commission—Continued.**

Rate charged on petroleum fuel oil, in tank-car loads, found not to have been unreasonable as compared with rate prescribed in *Midcontinent Oil Rates*, 86 I. C. C., 109, plus 25 per cent increase under general order No. 28, or as subsequently readjusted by establishment of flat increase of 4.5 cents, which latter rate is prescribed for the future. *Lake Park Refining Co. v. Director General*, as Agent, 381.

Storage charges assessed on a shipment unloaded by consignee and stored on carrier's right of way found unreasonable to extent they exceeded charges which would have accrued under demurrage and track-storage rules had shipment remained in the car. Reparation awarded and measure of maximum reasonable charges prescribed. *Kalamazoo Tank & Silo Co. v. Director General*, as Agent, 418.

Combination rates on cotton seed from Louisiana points to Newton, Miss., when basing on Rayville, La., found unreasonable in so far as the factors to Rayville exceeded or exceed the distance commodity rates to the so-called oil-mill stations on the Missouri Pacific. Reparation awarded. *Newton Oil Mill v. Director General*, as Agent, 433.

Rates on natural stone or grinding pebbles from certain Colorado points, to Dewey, Okla., found not unreasonable in the past as compared with other rates on grinding pebbles in western territory, but for the future from Arvada, Mount Olivet, Wiggington, and Golden, found unreasonable and reasonable rates prescribed. *Dewey Portland Cement Co. v. Director General*, as Agent, 609.

Class rate on cotton seed from Pageland, S. C., to Atlanta, Ga., found unreasonable to extent it exceeded commodity rate to Mina, Ga., a point within the Atlanta switching limits. Reasonable maximum rate prescribed and reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent, 661.

REFUND. See **OVERCHARGES**.

REHEARING. See **FURTHER HEARING**; **SUPPLEMENTAL REPORT**.

RELATIONSHIP OF RATES.

Relationship of interstate rates from certain Illinois points to Indianapolis, Ind., and intrastate rates from the same points to Chicago, East St. Louis, and Peoria, Ill., found to result in undue prejudice to Indianapolis and undue preference of Chicago, East St. Louis, and Peoria. Reasonable distance scale prescribed. *Indianapolis Chamber of Commerce v. C. C. C. & St. L. Ry. Co.*, 67 (76).

Rate on pressed steel side members of automobile truck frames found unreasonable to extent it exceeded or may exceed the rate on structural steel channels. Reasonable relationship prescribed and reparation awarded. *Moreland Motor Truck Co. v. Director General*, as Agent, 179.

In original report, 58 I. C. C., 549, the Commission prescribed a relationship of rates for the removal of undue prejudice, but due to points of origin being situated in different rate groups different percentage increases were applied following *Increased Rates, 1920*, 58 I. C. C., 220, again creating undue prejudice. Upon further hearing, undue prejudice removed by applying the same percentage of increase from both groups. *Silica Sand Producers' Traffic Assn. of Illinois v. Director General*, 453.

60 I. C. C.

RELATIONSHIP OF RATES—Continued.

Proposed increased commodity rates on fish oil, in barrels or tank cars, from St. Marys, Ga., to Ohio and Mississippi river crossings and north Atlantic ports found not justified as the existing relation in rates between competing points in the same territory would be destroyed and St. Marys would be placed at a disadvantage as compared with Fernandina, Fla., and other producing points. *Fish Oil from St. Marys*, 511.

Upon further hearing, finding upon reargument, 57 I. C. C., 839, that application of the same rate on iron and steel articles from Chicago, Ill., Terre Haute and Vincennes, Ind., and Pittsburgh, Pa., to Pacific ports for export is unduly prejudicial to Chicago, Terre Haute, and Vincennes affirmed, but because of changes in rates made pursuant to *Increased Rates, 1920*, 58 I. C. C., 220, rate from points found prejudiced should be made not less than 9 cents lower than from Pittsburgh. *Inland Steel Co. v. Director General*, 640.

RELATIVE ADJUSTMENT. *See* ADJUSTMENT OF RATES.

RELATIVE RATES.

Alpena, S. Dak.: Rates on sugar from New Orleans, La., to, found unreasonable to extent they exceeded rates to other South Dakota points in the immediate vicinity of Alpena. Reparation awarded. *Everybody's Mercantile Co. v. C. & N. W. Ry. Co.*, 143.

Atlanta, Ga.: Class rate on cotton seed from Pageland, S. C., to, found unreasonable to extent it exceeded commodity rate to Mina, Ga., a point within the Atlanta switching limits. Reasonable maximum rate prescribed and reparation awarded. *Empire Cotton Oil Co. v. Director General*, as Agent, 661.

Augusta and Atlanta, Ga.: Class rates on cotton seed from Charlotte, N. C., to, found unreasonable to extent they exceeded distance commodity rates maintained between points in North Carolina and Georgia in the same general vicinity. Reasonable rates for the future prescribed from Charlotte to Augusta and reparation awarded. *Buckeye Cotton Oil Co. v. Director General*, as Agent, 281.

Bowling Green, Ky., and Rugby Road, Tenn.: Fifth-class rates on crude petroleum, in tank-car loads, from, to Louisville, Ky., found unreasonable as compared with lower commodity rates from farther distant points. Reparation awarded on basis of commodity rates subsequently established. *Standard Oil Co. (Ky.) v. Director General*, as Agent, 449.

Bronson, Ill.: On coal originating at Missionfield, Ill., factors of combination intrastate rates from Bronson to Milford and Chicago, Ill., found not unreasonable during federal control, as they were the same as those from mines in the Danville group, Ill., to same destinations. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

Carlisle, S. C.: Sixth-class rate on cottonseed oil from, to Port Ivory, N. Y., found unreasonable to extent it exceeded lower commodity rate from mere distant points and subsequently established from Carlisle. Reparation awarded. *Procter & Gamble Mfg. Co. v. Director General*, as Agent, 447.

Coal Run branch mines: Rate on bituminous coal from mines on the Coal Run branch of the Western Maryland Ry. Co. to Washington and Uniontown, D. C., and Alexandria, Va., found unreasonable to extent it exceeded rate from other mines on the lines of other carriers in the same coal region. Reparation awarded. *Consolidation Coal Co. v. Director General*, as Agent, 147.

RELATIVE RATES—Continued.

Colorado points: Rates on natural stone or grinding pebbles from, to Dewey, Okla., found not unreasonable in the past as compared with other rates on grinding pebbles in western territory, but for the future from Arvada, Mount Olivet, Wiggington, and Golden, found unreasonable and reasonable rates prescribed. *Dewey Portland Cement Co. v. Director General*, as Agent, 600.

Guion, Ark.: Class rate on silica sand from, to Sapulpa, Okla., exceeded lower commodity rate in effect from Grays Summit and Pacific, Mo., farther distant points, which lower rate was subsequently established from Guion. Reparation awarded. *Odell-Daly Material Co. v. Director General*, as Agent, 737.

Hospers, Iowa: Rates on sugar from New Orleans, La., to, found unreasonable to extent they exceeded rates to other Iowa points in the immediate vicinity of Hospers. Reparation awarded. *Everybody's Mercantile Co. v. C. & N. W. Ry. Co.*, 143.

Imperial, W. Va.: Rate in effect during federal control on silica sand from, to Pennsboro, W. Va., found unreasonable as compared with lower rates in effect from Dunbar, Pa., and Berkeley Springs, W. Va. Reparation awarded. *Century Glass Sand Co. v. Director General*, as Agent, 759.

Lancaster, Pa.: Rate on ice from, to Washington, D. C., found unreasonable to extent it exceeded lower rate to Potomac Yard and Alexandria, Va., which lower rate was subsequently made applicable to Washington. Reparation awarded. *Chapin-Sacks Mfg. Co. v. Director General*, as Agent, 145.

Massillon, Ohio: Rate legally applicable on coal from points in the Kanawha district of West Virginia to, found unreasonable to extent it exceeded lower rate to Cleveland, Ohio, for an average distance greater than to Massillon, which lower rate was subsequently established. Reparation awarded. *Central Steel Co., v. C. & O. Ry. Co.*, 443.

Meridian, Miss.:

Class rates from, to Southern Ry. stations in Alabama, compared with class rates of the Southern Ry. and of other lines in the south generally. Appendix 5. *Meridian Traffic Bureau v. S. Ry. Co.*, 5 (15, 30).

Rates on imported blackstrap molasses, in tank-car loads, from New Orleans, La., Mobile, Ala., and Gulfport, Miss., to, found not unreasonable as compared with rates from same points of origin to Ohio and Mississippi river crossings. *Meridian Traffic Bureau v. Director General*, as Agent, 549.

Midland, Pa.: Rate on crude dolomite from Union Stone Company, Pa., to Midland, during federal control, found unreasonable as compared with lower rate to points in the same general territory for comparable distances, which lower rate was subsequently established to Midland. Reparation awarded. *Pittsburgh Crucible Steel Co. v. Director General*, as Agent, 503.

Midway and Frankfort, Ky.: Rates on glass bottles from Huntington, W. Va., to, found unreasonable to extent they exceed the rates to Louisville, Ky., a farther distant point. Measure of reasonable rates prescribed and reparation awarded. *Boldt Glass Co. v. Director General*, as Agent, 495.

Neodesha, Kans.: Rate on gas oil, in tank cars, from Cushing, Okla., to, found unreasonable and unduly prejudicial to extent it exceeded lower rate from other Oklahoma points and subsequently established from Cushing. Reparation awarded. *Shaffer Oil & Refining Co. v. Director General*, as Agent, 110.

RELATIVE RATES—Continued.

New Braunfels, Tex.: Rate on crushed stone from, to De Bidder, La., found unreasonable to extent it exceeded rates in effect on like traffic and for like distances between Shreveport, La., and points in Texas. Measure of reasonable maximum rate prescribed and reparation awarded. *Pearson v. Director General*, as Agent, 619.

Oklahoma points: Rates on caustic soda from St. Louis, Mo., and points east thereof, to Tulsa, Sand Springs, Cushing, and Bristow, Okla., found unreasonable to extent they exceeded rates in effect from St. Louis to Oklahoma City, Okla. Reparation awarded. *Oklahoma Petroleum & Gasoline Co. v. Director General*, as Agent, 750.

Orange, Tex.: Rates on sulphuric acid, in tank-car loads, from New Orleans, La., to, found unreasonable to extent it exceeded lower rates to Beaumont, Tex., and other farther distant points. Reparation awarded and measure of reasonable maximum rates prescribed. *Seaboard Oil & Refining Co. of Texas v. Director General*, as Agent, 451.

Salt Lake City, Utah: Rate legally applicable on steam cylinder stock from, to Cleveland, Ohio, found unreasonable to extent it exceeded rate from points west thereof. Reparation awarded. *Federal Oil & Supply Co. v. Director General*, 185.

Tacoma, Wash., and Vancouver, B. C.: Rate on leaf or unmanufactured tobacco from, to New York, N. Y., found unreasonable to extent it exceeded rate from San Francisco, Calif., to same destination. Reparation awarded. *American Tobacco Co. v. Director General*, as Agent, 486 (488).

RELEASED RATES.

Carriers made no specific reference in the tariff to the Commission's order authorizing the publication of rates based on value as required by section 20 of the act, and if they desire to continue such rates the tariff should be accordingly corrected. *Meridian Traffic Bureau v. Director General*, as Agent, 549 (550).

RENTAL.

Live poultry moves in cars furnished by shipper, who obtains them under rentals from the Live Poultry Transit Company. *Live Poultry & Dairy Shippers' Asso. v. Director General*, as Agent, 284 (285).

REOPENING. See FURTHER HEARING; SUPPLEMENTAL REPORT.

REPARATION. See DAMAGES.

RES ADJUDICATA.

Carriers directed particular attention to a rate found reasonable in another case. The conclusions therein reached are final upon the record made, but subsequent evidence may warrant a different finding, and the issues are not *res adjudicata* here. *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 687 (706).

RESTORED RATES.

Rates on ore from Montana points were increased on June 25, 1918, but were afterwards reduced to approximately the same basis as was previously in effect in order to encourage production at western points at a time when importation was small. *Held*: Such rates, while voluntarily established, can not from the mere fact of their maintenance be held to be reasonable rates. *Cambria Steel Co. v. Director General*, as Agent, 459 (464).

RESTORED RATES—Continued.

International rates established by the Director General on June 25, 1918, under general order 28, between points in western Canada and St. Paul, Minn., disrupted the relationship existing with Canadian rates which was subsequently restored by reducing the international rates. *Held*: Rates originally established and now maintained were and are for purpose of enabling carriers whose routes lie in this country to secure a share of the traffic in competition with the Canadian lines. Rates during interim not unreasonable. *Swift & Co. v. C. N. Rys.*, 747.

RESTRICTING MARKETS. See MARKETS.**REVENUE. See also EARNINGS.**

Whether intrastate charges are unjustly discriminatory against interstate commerce does not depend upon the amount of revenue involved. *South Carolina Fares and Charges*, 290 (298).

RIGHT OF WAY.

Storage charges assessed on a shipment unloaded by consignee and stored on carrier's right of way found unreasonable to extent they exceeded charges which would have accrued under demurrage and track-storage rules had shipment remained in the car. Reparation awarded and measure of maximum reasonable charges prescribed. *Kalamazoo Tank & Silo Co. v. Director General, as Agent*, 418.

ROUTES.

Routing specified by shipper but no rate or junction point. Legally applicable rate charged found unreasonable to extent it exceeded lower rate applicable via other routes and subsequently established via route of movement but in connection with a different junction. Reparation awarded. *Roberts Cotton Oil Co. v. Director General, as Agent*, 189.

Combination rate found unreasonable to extent it exceeded joint rate in effect via other routes, which lower rate was subsequently established via route of movement. Reparation awarded. *Nason Coal Co. v. Director General, as Agent*, 214.

Rates charged and legally applicable not found excessive or unreasonable for the transportation service rendered as originating carrier forwarded shipments via the cheapest route possible under complainant's routing instructions. *Du Pont de Nemours & Co. v. Director General, as Agent*, 248.

Sixth-class rate on tankage, dry, found not unreasonable as compared with lower commodity rate in effect via other routes and subsequently established via route of movement. *Virginia-Carolina Chemical Co. v. Director General, as Agent*, 377.

Rate legally applicable not found unreasonable as compared with lower rate via another route where shipper specifically routed shipments via the higher-rated route. *Empire Refineries (Inc.) v. Director General, as Agent*, 379.

Proposed cancellation of commodity rate on hair and wool press cloth from Houston, Tex., to Vicksburg, Miss., and New Orleans, La., applicable only over routes composed in part of carriers that during the period of government operation were not under federal control, leaving in effect class rates applicable on traffic that moved wholly over lines under federal control, found justified. *Press Cloth Rates*, 414.

ROUTES—Continued.

Consignee authorized carrier whose rails reached its plant to turn unrouted shipments over to another carrier for delivery, resulting in a three-line haul. Joint rate involving a two-line haul, lower than combination applicable for three line haul contemporaneously in effect, *Held*: Rate legally applicable not found unreasonable as compared with rates for comparable distances for three-line hauls or with joint rate in effect and subsequently established via route of movement. *Southern Fuel Co. v. Director General, as Agent, 457.*

Respondent, having acquired certain trackage rights, purposes to perform the entire transportation service without increase in charge to shippers. Proposed change in routing of coal from Kentucky and Tennessee mines on the L. & N. R. R. to Atlanta, Ga., beyond Cartersville, Ga., found justified. Coal to Atlanta, Ga., via Cartersville, and W. & A. Ry., 509.

In determining the reasonableness of rates consideration given not only to routes comprising short line distance but to all routes via reasonably direct lines. *Holmes & Hallowell v. G. N. Ry. Co., 637 (708).*

ROUTING INSTRUCTIONS.

Rates charged and legally applicable not found excessive or unreasonable for the transportation service rendered, as originating carrier forwarded shipments via the cheapest route possible under complainant's routing instructions. *Du Pont de Nemours & Co. v. Director General, as Agent, 243.*

Because of an embargo shipper authorized change in destination and ultimately reconsigned shipment to originally billed point. Shipper might have stood upon his right to have joint rate specified in original billing protected, but since he consented to the substitution of a different contract in the face of a warning that change in destination could not be made the effective means of diversion after arrival at new destination, he thereby assumed liability for the combination rates charged and legally applicable over route of movement. *George Pottery Co. v. Director General, as Agent, 372.*

Where complainant specifically routed shipment via higher rated route and record does not establish that objection was made to such routing, or that it was inserted in bill of lading under protest, misrouting not established. *Sparr Fruit Co. v. R. G., E. P. & S. F. R. R. Co., 455.*

Director General, without complainant's consent, in compliance with general order No. 1, disregarded routing instructions to promote speed and efficiency, but failed to adjust charges down to basis of the rate in effect via route designated by shipper as authorized by the Commission's order of April 26, 1918. *Held*: Shipments misrouted. Reparation awarded. *Du Pont de Nemours & Co. v. Director General, as Agent, 621.*

Shipments found misrouted where route and rate inserted in bill of lading by shipper and carrier forwarded via route taking higher rate. Reparation awarded. *Union Petroleum Co. v. Director General, as Agent, 655.*

Following *Lowry Lumber Co., 59 I. C. C., 700*, combination rate, plus demurrage and reconsignment charges, found not unreasonable where shipment was placed for unloading at originally billed destination and subsequently reconsigned. *Lowry Lumber Co. v. Director General, as Agent, 718.*

RULES OF PRACTICE. See ADMINISTRATIVE RULINGS; PLEADING AND PRACTICE.
SCALE OF RATES. See DISTANCE RATES.

SCRAP IRON. See JUNK.

SECTION 2. *See also* DISCRIMINATION.

Refusal of defendants to absorb switching charges of the Michigan R. R. on traffic to or from complainants' plants on that road at Grand Rapids, Mich., while absorbing one another's switching charges on like traffic to or from industries located on their own tracks at that point under substantially similar circumstances and conditions, found to be unjustly discriminatory in violation of section 2. Reparation denied. *National Spring & Wire Co. v. Director General*, as Agent, 564.

Failure of defendants to perform service of switching and spotting between trunk line and loading and unloading points within complainant's plant at Brackenridge, Pa., in the Pittsburgh rate district, or to make an allowance covering the cost of that service, while performing such services without additional charge or making allowances to competitors similarly situated in the same district, found to result in unjust discrimination in violation of section 2. *Allegheny Steel Co. v. Director General*, as Agent, 575.

SECTION 3. *See* DISCRIMINATION; PREFERENCES AND PREJUDICES.**SECTION 4. *See also* LONG-AND-SHORT-HAUL; THROUGH AND LOCAL.**

Request of carrier that it be not required to amend its tariffs, found by the Commission to be violative of section 4 of the act, until the future status of a road, the operation of which was ordered discontinued by a United States district court, is determined. *Held*: Commission can not sanction the continued publication of rates which are clearly at variance with the provisions of the law. *Perry County Coal Corp. v. Director General*, 52 (54).

SECTION 6.

A proportional rate is nothing more or less than a separately established rate, as that phrase is used in section 6 of the act, applicable to through transportation, and in order to be lawful, must be established, within the meaning of section 6, by publication and filing with the Commission. *Greater Des Moines Committee (Inc.) v. Director General*, 403 (407).

SECTION 15.

Where complainant at its own expense spotted cars for both itself and another company, a separate legal entity, complainant was not the "owner of the property transported," for the other company within the meaning of section 15 of the act. *United Chemical & Organic Products Co. v. Director General*, as Agent, 523 (525-526).

Considered separately the Steubenville & Wheeling Traction Company's rails within the limits of Steubenville, Mingo Junction, and Brilliant, Ohio, may constitute electric street railways, but the rails between the municipalities constitute an interurban railroad as defined in the Ohio statutes, although designated as an electric street railway in its franchises and articles of incorporation. Neither can that road be said to be a "street electric passenger railway," as that term is used in section 15 of the act. *Beall v. W. T. Co.*, 600 (606).

SECTION 20.

Carriers made no specific reference in the tariff to the Commission's order authorizing the publication of rates based on value, as required by section 20 of the act, and if they desire to continue such rates the tariff should be accordingly corrected. *Meridian Traffic Bureau v. Director General*, as Agent, 549 (550).

SET UP AND KNOCKED DOWN.

Fourth-class rate on locomotives, k. d., essential parts of which were missing at time of shipment, found legally applicable as the absence of such parts did not affect the identity of the article transported or destroy its fundamental character from a transportation or tariff standpoint. *Harris Bros. Co. v. Director General*, as Agent, 428.

SHORT-HAUL TRAFFIC.

Intrastate distance rates charged on hollow clay building tile and cement from North Charleston Port Terminals, S. C., to Charleston, S. C., during federal control, found illegal and unreasonable to extent they exceeded the intraterminal rate contemporaneously in effect on traffic between warehouses, industries, and wharves on the carriers' lines. Reparation awarded. *Conden Baking Co. v. Director General*, as Agent, 149.

Combination rates on coal from certain mines in the Belleville district of southwestern Illinois, to points in Missouri on the Mississippi River & Bonne Terre Ry., found unreasonable and unduly prejudicial to extent they exceeded joint rates from other mines in the same district served by the Southern Ry. *Perry County Coal Corp. v. Director General*, 250.

Per car rates established by the Director General under general order No. 28, on bituminous coal and charged on shipments moving between yards of complainant in Philadelphia, Pa., not found unreasonable as compared with lower per car rates applicable on other commodities or with those subsequently established. *Atlantic Refining Co. v. Director General*, as Agent, 355.

Rate applicable on sporadic shipments of coal-tar naphtha, in tank-car loads, from Ontario street station to Point Breeze station in Philadelphia, during federal control, exceeded lower rate on petroleum naphtha, which lower rate was subsequently made applicable to coal-tar naphtha, Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 506.

SHORT LINES. *See also INDUSTRIAL LINES.*

Rates to and from plants of complainant and intervener at Woodlawn and West Economy, Pa., served only by the Aliquippa & Southern, but moving in connection with the Pittsburgh & Lake Erie, found unreasonable and unduly prejudicial to extent they exceed line-haul rates to or from Woodlawn. Reparation awarded. *Jones & Laughlin Steel Co. v. Director General*, as Agent, 325.

The following short lines found to be common carriers subject to the act: Aliquippa & Southern R. R. Co. *Jones & Laughlin Steel Co. v. Director General*, as Agent, 325 (381).

Chicago & West Ridge R. R. Trackage Charge on Loaded Cars, 134.

Jennings R. R. *Griffith v. Jennings*, 232 (236).

Millers Creek R. R. Consolidation Coal Co. v. C. & O. Ry. Co., 763 (768).

Higginsville Switch Co. found not to be a common carrier subject to the act. *Farmers Fuel Co. v. Director General*, as Agent, 715 (718).

SHORT LINE DISTANCE.

From Duluth, Minn., to Aberdeen, S. Dak., is 380 miles via the Great Northern, while via the North Western it is 541 miles. *Holmes & Hallowell v. G. N. Ry. Co.*, 687 (708).

In determining the reasonableness of rates consideration given not only to routes comprising short line distance but to all routes via reasonably direct lines. *Id.* (708).

SLEEPING CARS. *See* PULLMAN SERVICE.**SPORADIC MOVEMENT.**

Fourth-class rate legally applicable on intrastate shipments of sulphuric acid, in tank cars, found not unreasonable as compared with lower commodity rate subsequently established, there being no movement before or since the one here involved. *Midland Refining Co. v. Director General*, as Agent, 125.

Combination rate legally applicable on a sporadic shipment of bituminous coal from Sugar Creek, Ohio, to Parral, Ohio, during federal control, not found unreasonable as compared with lower joint rate subsequently established. *Robinson Clay Product Co. v. Director General*, as Agent, 499.

Rate applicable on sporadic shipments of coal-tar naphtha, in tank-car loads, from Ontario street station to Point Breeze station in Philadelphia, during federal control, exceeded lower rate on petroleum naphtha, which lower rate was subsequently made applicable to coal-tar naphtha. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 506.

Class rate legally applicable on an emergency intrastate shipment of old rails, moving during federal control, found not unreasonable as compared with lower commodity rate subsequently established after request therefor made. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 723.

Class rates legally applicable on isolated shipments of peanut oil from Suffolk, Va., to Macon, Ga., found not unreasonable as compared with lower commodity rate in the opposite direction, which lower rate was subsequently established after request therefor made. *Proctor & Gamble Co. v. Director General*, as Agent, 757.

SPOTTING CARS.

Refusal of defendant to grant an allowance to complainant for cost of spotting found to have resulted in unreasonable and unduly prejudicial charges in view of the fact that tariffs contemplated delivery to, and taking of cars from, places of unloading and loading at industries along defendant's line. Reparation awarded. *United Chemical & Organic Products Co. v. Director General*, as Agent, 523.

Giving an allowance in lieu of performing spotting service is optional with the carriers. *Id.* (524).

Where complainant, in undertaking to perform spotting service, relied upon an agreement that it would be granted an allowance therefor, carrier can not be heard to say that it has always been ready and willing to perform the spotting, and that complainant voluntarily relieved it from performing the service. *Id.* (525).

Where complainant at its own expense spotted cars for both itself and another company, a separate legal entity, complainant was not the "owner of the property transported" for the other company within the meaning of section 15 of the act. *Id.* (525-526).

Failure of defendants to spot cars within complainant's plant at Arlington, Staten Island, N. Y., beyond the established interchange tracks or to make an allowance to complainants for performing that service with their own facilities not shown unreasonable or unduly prejudicial by reason of fact that such services or allowances were performed or made at other industries in the same rate district and elsewhere. *Downey Ship Building Corp. v. S. I. R. T. Ry. Co.*, 543.

SPOTTING CARS—Continued.

Whatever transportation service the law requires carriers to supply, they have the right to furnish, and even where line-haul or terminal delivery rate covers receipt and delivery of freight on industry spurs, or on interior tracks of industrial plants, the owner of the property transported may not in every case receive an allowance from the carriers when he elects to perform that service. *Id.* (548).

Failure of defendants to perform service of switching and spotting between trunk line and loading and unloading points within complainant's plant at Brackenridge, Pa., in the Pittsburgh rate district, or to make an allowance covering the cost of that service, while performing such services without additional charge or making allowances to competitors similarly situated in the same district, found to result in unjust discrimination, in violation of Section 2. *Allegheny Steel Co. v. Director General*, as Agent, 575.

STATE AND INTERSTATE.

Class and commodity rates between Meridian, Miss., and points in Alabama found unreasonable and unduly prejudicial to Meridian and its shippers as compared with class and commodity rates for like distances in Alabama. Reasonable maximum rates between Meridian and points in Alabama prescribed and undue prejudice ordered removed. *Meridian Traffic Bureau v. S. Ry. Co.*, 5.

Table of distance class rates applicable on intrastate traffic in Alabama as compared with rates on interstate traffic for distances up to 200 miles. Appendixes 1 and 2. *Id.* (7, 8, 28, 29).

Certain intrastate rates, fares, and charges, required by state authority to be maintained within the state, lower than the corresponding interstate rates, fares, and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly prejudicial to interstate passengers and shippers, unduly preferential of intrastate passengers and shippers, and unjustly discriminatory against interstate commerce. *Iowa Passenger Fares and Charges*, 55; *Montana Rates and Fares*, 61; *Ohio Rates, Fares, and Charges*, 78; *Intrastate Rates within Illinois*, 92; *Michigan Passenger Fares*, 245; *South Carolina Fares and Charges*, 290; *Nebraska Rates, Fares, and Charges*, 305; *Indiana Rates, Fares, and Charges*, 337; *North Carolina Fares and Charges*, 362; *Utah Rates, Fares, and Charges*, 388; *Intrastate Rates within the State of Texas*, 421; *Louisiana Rates, Fares, and Charges*, 467 (474); *Georgia Rates, Fares, and Charges*, 527; *Florida Rates, Fares, and Charges*, 551; *Nevada Rates, Fares, and Charges*, 623.

Intrastate distance rates on cattle and hogs within Illinois, lower than the corresponding interstate distance rates from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis and unjust discrimination against interstate commerce. Reasonable distance scale prescribed. *Indianapolis Chamber of Commerce v. C. C. & St. L. Ry. Co.*, 67 (76).

Different intrastate mixed-carload rule on cattle and hogs within Illinois, which results in lower charges than from application of interstate rule applying on traffic from Illinois points to Indianapolis, Ind., found to result in undue prejudice to Indianapolis and in unjust discrimination against interstate commerce. Interstate rule prescribed. *Id.* (77).

60 I. C. C.

STATE AND INTERSTATE—Continued.

The law requires the Commission to fix rates, fares, and charges so that carriers shall earn a certain return upon the aggregate value of the railway property held for and used in the service of transportation, and to the extent that intrastate rates, fares, and charges do not contribute their proportionate share to such return they unjustly discriminate against interstate commerce. *South Carolina Fares and Charges*, 290 (297).

Whether intrastate charges are unjustly discriminatory against interstate commerce does not depend upon the amount of revenue involved. *Id.* (298).

Cost of service is only one of the elements to be considered in determining what would be a proper relationship between intrastate and interstate fares. If it does cost more to handle one character of passenger traffic than the other, it would not necessarily follow that there should be a difference in rates. *Nebraska Rates, Fares, and Charges*, 305 (308).

Intrastate rates on coal and ore within the state of Utah not found unreasonably preferential, unduly prejudicial, or unjustly discriminatory against interstate commerce. *Utah Rates, Fares, and Charges*, 388 (395).

The manifest intent of Congress was to repose in the Commission authority to provide the revenues found necessary to yield the specified return by considering the entire structure of rates, both state and interstate, and the aggregate value of the railroad property held for and used in the service of transportation without regard to state lines, and to protect interstate commerce against any undue, unreasonable, or unjust discrimination. *Intrastate Rates within the State of Texas*, 421 (426).

While there is no interstate commerce in sugar cane between points in Louisiana and points in other states, it seems unjust that interstate commerce and shippers should be required to forego the use of needed equipment in order that this particular traffic may be accorded a preference or be penalized through higher interstate rates to meet a deficiency in revenue growing out of the preferred treatment accorded this particular class of intrastate traffic and shippers. *Louisiana Rates, Fares, and Charges*, 467 (476).

If the integrity of interstate rates is to be maintained and the fundamental purposes of the interstate commerce act carried out, regulation by the state commissions of intrastate rates can not be exercised in such a way as to result in undue prejudice against interstate shippers or unjust discrimination against interstate commerce. *Georgia Rates, Fares, and Charges*, 527 (534).

Intrastate passenger fares of the Wheeling Traction Co., an electric line, between certain points in the state of Ohio, lower than the corresponding interstate fares between the same Ohio points and certain points in West Virginia, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Reasonable fares prescribed. *Beall v. W. T. Co.*, 600.

Rates on anthracite and bituminous coal from Duluth and Superior, Wis., and other points at the head of the lakes taking same rates, to destinations in Minnesota, South Dakota, and North Dakota, found unduly prejudicial to extent they exceed the rates in effect for intrastate transportation of like traffic from Duluth to points in Minnesota for like distances, or to the extent they are relatively higher, distance considered, than the rates in effect on such intrastate traffic. *Holmes & Hallowell v. G. N. Ry. Co.*, 687.

STATE COMMISSION.

Differences in judgment as among the several state commissions, if each could and would create a rate group of its own, would obviously nullify the fundamental purposes of the transportation act. *Nebraska Rates, Fares, and Charges*, 805 (818); *Indiana Rates, Fares, and Charges*, 337 (346); *Florida Rates, Fares, and Charges*, 551 (558).

If the integrity of interstate rates is to be maintained and the fundamental purposes of the interstate commerce act carried out, regulation by the state commissions of intrastate rates can not be exercised in such a way as to result in undue prejudice against interstate shippers or unjust discrimination against interstate commerce. *Georgia Rates, Fares, and Charges*, 527 (534).

STATE RATES.

Jurisdiction assumed by the Commission over demurrage charges on intrastate shipments moving subsequent to December 28, 1917, the date upon which by proclamation the President assumed control of the transportation systems. *Mount Hood R. R. Co. v. Director General*, as Agent, 116. Fourth-class rate legally applicable on intrastate shipments of sulphuric acid, in tank cars, found not unreasonable as compared with lower commodity rate subsequently established, there being no movement before or since the one here involved. *Midland Refining Co. v. Director General*, as Agent, 125.

Intrastate distance rates charged on hollow clay building tile and cement from North Charleston Port Terminals, S. C., to Charleston, S. C., during federal control, found illegal and unreasonable to extent they exceeded the intraterminal rate on traffic between warehouses, industries, and wharves on the carriers' lines. Reparation awarded. *Condon Baking Co. v. Director General*, as Agent, 149.

Shipments of long logs moving intrastate found to consist of "logs," and lumber rates assessed on theory that they constituted timbers, found illegal. Certain shipments found undercharged and others overcharged, and rates applicable on shipments moving after January 18, 1918, found unreasonable to extent they exceeded 5 cents per 100 pounds, prescribed on June 25, 1918. Reparation awarded. *Miller v. Director General*, as Agent, 162.

Jurisdiction assumed by the Commission over intrastate rates on shipments moving on and after January 1, 1918, on which date "for the purpose of accounting," the President assumed control of the transportation systems. *Id.* (163).

Where issue of undue or unreasonable advantage, preference, or prejudice is not involved in the proceeding, the Commission's jurisdiction to make a finding for the future as to state rates is confined to the period of federal control which terminated March 1, 1920. *Miller v. Director General*, 162 (165); *Atlantic Refining Co. v. Director General*, as Agent, 355; *Illiff-Bruff Chemical Co. v. Director General*, as Agent, 720 (722).

Class rate charged on sulphuric acid in tank-car loads from Atlanta, Ga., to La Grange, Ga., exceeded lower commodity rate applicable under rule 77 of Tariff Circular 18-A. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 201.

Combination rate charged on lumber, moving intrastate from Long Lake, Wis., to Dorchester, Wis., found unreasonable to extent it exceeded lower rate between points in the same general territory for greater distances. Reparation awarded. *Wheeler & Timlin v. Director General*, as Agent, 265.

STATE RATES—Continued.

Per car rates established by the Director General under general order No. 28 on bituminous coal and charged on shipments moving between yards of complainant in Philadelphia, Pa., not found unreasonable as compared with lower per car rates applicable on other commodities or with those subsequently established. *Atlantic Refining Co. v. Director General*, as Agent, 855.

Fifth-class rate on jute and jute butts from East Boston, Mass., to Ludlow Junction, Mass., during federal control, exceeded lower commodity rate subsequently established. Reparation awarded. *Ludlow Mfg. Associates v. Director General*, as Agent, 441.

Combination rate legally applicable on a sporadic shipment of bituminous coal from Sugar Creek, Ohio, to Parral, Ohio, during federal control, not found unreasonable as compared with lower joint rate subsequently established. *Robinson Clay Product Co. v. Director General*, as Agent, 499.

Rate on crude dolomite from Union Stone Company, Pa., to Midland, Pa., during federal control, found unreasonable as compared with lower rate to points in the same general territory for comparable distances, which lower rate was subsequently established to Midland. Reparation awarded. *Pittsburgh Crucible Steel Co. v. Director General*, as Agent, 503.

Rate applicable on sporadic shipments of coal-tar naphtha, in tank-car loads, from Ontario street station to Point Breeze station in Philadelphia, during federal control, exceeded lower rate on petroleum naphtha, which lower rate was subsequently made applicable to coal-tar naphtha. Reparation awarded. *Atlantic Refining Co. v. Director General*, as Agent, 506.

Fourth-class rates on automobile-tire carriers from Detroit, Mich., to Flint, Mich., moving during federal control, found applicable and not unreasonable as compared with fifth-class rates on automobile parts. *Bulck Motor Co. v. Director General*, as Agent, 669.

On coal originating at Missionfield, Ill., factors of combination intrastate rates from Bronson to Milford and Chicago, Ill., found not unreasonable during federal control as they were the same as those from mines in the Danville group, Ill., to same destinations. *Electric Coal Co. v. Director General*, as Agent, 683 (685).

On intrastate traffic, moving under combination rates, the Commission's jurisdiction is limited to rates over that portion of the haul over lines under federal control. *Id.* (685).

On coal originating at Missionfield, Ill., factor of combination intrastate rate from Bronson to Jamaica, Ill., found unreasonable during federal control to extent it exceeded a distance scale rate of 70 cents maintained in Illinois and Indiana for distances of 10 miles or less. Reparation awarded. *Id.* (685.)

Joint rate on coal from Missionfield to Milford, Ill., effective June 27, 1919, found unreasonable during remainder of period of federal control, to extent it exceeded a rate 8 cents less than to Chicago, Ill., a farther distant point, which basis had always been maintained prior to the establishment of the joint rate. Reparation awarded. *Id.* (685).

On sulphuric acid moving during federal control from Danville, Ill., to Hoopeston, Ill., rate to Chicago, Ill., assessed under an intermediate rule in the tariff. Lower rate in effect to Peoria, Ill., when moving through Hoopeston, which also applied to intermediate destinations. *Held*: Chicago rate legally applicable as it was not specifically cancelled when the Peoria rate was first established, but found unreasonable to that extent. Reparation awarded. *Illiff-Bruff Chemical Co. v. Director General*, as Agent, 720.

STATE RATES—Continued.

Class rate legally applicable on an emergency intrastate shipment of old rails, moving during federal control, found not unreasonable as compared with lower commodity rate subsequently established after request therefor made. *Central Pennsylvania Lumber Co. v. Director General*, as Agent, 723.

Through rate on sand from Boonville, N. Y., to McKeever, N. Y., during federal control, exceeded lower combination in effect via route of movement to and from Forestport, N. Y. Reparation awarded. *Meron v. Director General*, as Agent, 725.

Increased rate on fuel oil moving by water from interstate or foreign points, resulting from the substitution of a flat increase of 4.5 cents in lieu of the increase of 25 per cent authorized under general order No. 28, for the rail haul from Tampa and Port Tampa, Fla., to points in the Bone Valley District of Florida, found not unreasonable as the rate from the ports has been, and is, upon a lower basis than maintained elsewhere. *International Agricultural Corp. v. Director General*, as Agent, 726.

Rate in effect during federal control on silica sand from Imperial, W. Va., to Pennsboro, W. Va., exceeded lower rate in effect from Dunbar, Pa., which rate was subsequently established from Imperial. Reparation awarded. *Century Glass Sand Co. v. Director General*, as Agent, 760.

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

STORAGE.

Due to a strike of lightermen, carriers refused to accept order for delivery of export shipment to steamship. On day steamer arrived second order was tendered for delivery to another steamship, and was accepted subject to delay. *Held*: Storage charges accruing not found unreasonable or unlawful as complainant gave orders for different delivery and carriers would have been without authority to act upon first order even if accepted. *Cade (Inc.) v. P. R. R. Co.*, 151.

Charges assessed on a shipment unloaded by consignee and stored on carrier's right of way found unreasonable to extent they exceeded charges which would have accrued under demurrage and track-storage rules had shipment remained in the car. Reparation awarded and measure of maximum reasonable charges prescribed. *Kalamazoo Tank & Silo Co. v. Director General*, as Agent, 418.

Charges imposed by commercial warehouses afford no fair test of the reasonableness of storage charges imposed by common carriers. *Id.* (419).

On shipments unloaded by consignee or at consignee's request by the carrier, charges under a tariff rule providing for assessment of storage charges on basis of demurrage rules while shipments in cars and storage charges after unloading, found legally applicable. *Harlem Feed & Grocery Co. v. Director General*, as Agent, 652.

STORAGE IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

STREET RAILWAYS.

Facts that the Steubenville & Wheeling Traction Co. was incorporated as an "electric street railroad," that its rails were laid entirely within Ohio, and that for operating reasons no through cars are run or through tickets sold, do not stamp the service it now performs as purely intrastate. Whether it be regarded as a separate legal entity or as a division of the Wheeling Traction Co., which owns all its capital stock, it is an electric railway engaged in interstate transportation and is subject to the Commission's jurisdiction. *Beall v. W. T. Co.*, 600 (607).

STREET RAILWAYS—Continued.

Considered separately the Steubenville & Wheeling Traction Company's rails within the limits of Steubenville, Mingo Junction, and Brilliant, Ohio, may constitute electric street railways, but the rails between the municipalities constitute an interurban railroad as defined in the Ohio statutes, although designated as an electric street railway in its franchises and articles of incorporation. Neither can that road be said to be a "street electric passenger railway" as that term is used in section 15 of the act. *Id.* (606).

STRIKE.

Due to a strike of lightermen carriers refused to accept order for delivery of export shipment to steamship. On day steamer arrived second order was tendered for delivery to another steamship and was accepted subject to delay. *Held:* Storage charges accruing not found unreasonable or unlawful, as complainant gave orders for different delivery and carriers would have been without authority to act upon first order even if accepted. *Cade (Inc.) v. P. R. R. Co.*, 151.

SUBSEQUENTLY ESTABLISHED RATES. *See* REDUCTION IN RATES (By Carriers).

SUPPLEMENTAL REPORT. *See also* FURTHER HEARING.

On further consideration original report 53 I. C. C., 245, rates on handle material not further finished than sawed or turned to shape, found unreasonable to extent they exceeded rates on lumber. Reparation awarded. *American Fork & Hoe Co. v. St. L. & S. F. R. R. Co.*, 85.

Certain rates and charges for freight services and on milk and cream required by state authority to be maintained within the state, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220 and 302, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *Intrastate Rates within Illinois*, 92.

Upon supplemental report on further hearing, decision in 56 I. C. C., 690, modified as to the amount of reparation awarded. *Plymouth Coal Co. v. D., L. & W. R. R. Co.*, 133.

Upon further consideration of original report, 58 I. C. C., 97, and in view of the Commission's findings in 59 I. C. C., 404, order for removal of undue prejudice entered, requiring establishment of rates on interstate shipments of various commodities to Westport, Mo., in connection with the Westport belt, which shall not exceed rates on like traffic to the Kansas City, Mo.-Kans., switching district, or to Westport in connection with the Strang line. *Badger Lumber Co. v. A., T. & S. F. Ry. Co.*, 278.

Upon further hearing reparation awarded on shipments of pig iron from points in Alabama and Tennessee to Ohio River crossings and points in c. f. a. territory. Preceding supplemental report 52 I. C. C., 576. *Gloss-Sheffield Steel & Iron Co. v. L. & N. R. R. Co.*, 595.

SURCHARGE. *See* PULLMAN SERVICE.

SWITCH CONNECTION.

Cancellation of charge for switching service at Paris, S. C., which it is physically impossible to render, due to the removal of a switch connection installed to assist the government in the handling of troops and war supplies, found justified, but will not be permitted until appropriate tariff filed extending the Greenville, S. C., switching limits to include Paris. *Switching and Absorption at Paris*, 210.

60 I. C. C.

SWITCHING. See also **Absorption**; **Reciprocal Switching**; **Spotting Cars**.

Complainant merely compared switching charge with lower charges for similar services at other points on the carrier's line. *Held*: Mere comparative statement unsupported by a showing of the conditions under which they are maintained can not be accepted as proof that the charges at a given point are unreasonable. *Holly Ridge Lumber Co. v. Director General, as Agent*, 121.

Interplant switching charges for the movement of lime and limestone, increased under general order No. 28 by the Director General, and subsequently reduced, found unreasonable to extent they exceeded subsequently established charges. Reparation awarded. *Riverton Limestone Co. (Inc.) v. Director General, as Agent*, 128.

Cancellation of charge for switching service at Paris, S. C., which it is physically impossible to render, due to the removal of a switch connection installed to assist the government in the handling of troops and war supplies, found justified, but will not be permitted until appropriate tariff filed extending the Greenville, S. C., switching limits to include Paris. *Switching and Absorption at Paris*, 210.

Because of dispute as to divisions, carrier proposed to cancel provisions for absorption of switching charges at Coeur d'Alene, Idaho, on lumber and articles taking same rates originating on the Northern Pacific at that point, resulting in increased through charges. *Held*: Cancellation not justified. *Absorption of Switching Charges at Coeur d'Alene*, 275.

Certain charges for, in connection with intrastate line hauls, required by state authority to be maintained within the state of South Carolina, lower than the corresponding interstate charges authorized in *Increased Rates, 1920*, 58 I. C. O., 220, found unduly prejudicial to interstate shippers, unduly preferential of intrastate shippers, and unjustly discriminatory against interstate commerce. *South Carolina Fares and Charges*, 290 (304).

Refusal of defendants to absorb switching charges of the Michigan R. R. on traffic to or from complainants' plants on that road at Grand Rapids, Mich., while absorbing one another's switching charges on like traffic to or from industries located on their own tracks at that point under substantially similar circumstances and conditions, found to be unjustly discriminatory in violation of section 2. Reparation denied. *National Spring & Wire Co. v. Director General, as Agent*, 564.

Maintenance of a separate switching charge on coal in addition to the group rates from complainant's mine located in the Castle Gate group, Utah, while from other mines in the same group rates include the placing of cars at tipples, and switching of cars from the mines, found unreasonable to extent of the added switching charge and unduly prejudicial to extent that rates from mine of complainant exceed the Castle Gate group rates maintained from the other mines. Reasonable relationship prescribed and reparation awarded. *Lion Coal Co. v. U. Ry. Co.*, 764.

Rates on coal from points on the Millers Creek R. R., resulting from the cancellation by the C. & O. Ry. of the absorption of the switching charge of that line, found unreasonable and unduly prejudicial to extent they exceed the rates from the Big Sandy group-5 district. Reparation awarded. *Consolidation Coal Co. v. C. & O. Ry. Co.*, 768.

Where the absorption of a switching charge subsequent to January 1, 1910, was the voluntary act of the carrier, and its cancellation had the effect of increasing the transportation charges, the burden of proof is upon the carrier to justify such increased charges. *Id.* (767).

SWITCHING—Continued.

Carrier sought to justify increased rate brought about by cancellation of absorption of switching charge on ground that it has been its policy not to divide its through rates with independent roads, but to apply its rates to the junction points with such independent lines. *Held*: This policy tends to restrict the markets and was condemned in *Hughes Creek Coal Co.*, 29 I. C. C., 871, 876, and in other cases. *Id.* (767).

SWITCHING LIMITS.

Cancellation of charge for switching service at Paris, S. C., which it is physically impossible to render, due to removal of a switch connection installed to assist the government in the handling of troops and war supplies, found justified, but will not be permitted until appropriate tariff filed extending the Greenville, S. C., switching limits to include Paris. Switching and Absorption at Paris, 210.

SYSTEM.

Uniformity in passenger fares could not be maintained if it should become the policy of the Commission, in fixing fares, to consider as controlling the transportation characteristics of particular lines or portions of lines. *South Carolina Fares and Charges*, 290 (296).

Facts that the Steubenville & Wheeling Traction Co. was incorporated as an "electric street railroad," that its rails were laid entirely within Ohio, and that for operating reasons no through cars are run or through tickets sold, do not stamp the service it now performs as purely intra-state. Whether it be regarded as a separate legal entity or as a division of the Wheeling Traction Co., which owns all its capital stock, it is an electric railway engaged in interstate transportation and is subject to the Commission's jurisdiction. *Beall v. W. T. Co.*, 600 (607).

TARIFF CIRCULAR. *See ADMINISTRATIVE RULINGS.*

TARIFFS.

In order to conform to the requirements of the law and the tariff regulations prescribed by the Commission, carriers' rates and rules should be definite and specific. *Natchez Chamber of Commerce v. Director General*, 897 (401).

TAX. *See WAR TAX.*

THREE-LINE HAUL.

Consignee authorized carrier whose rails reached its plant to turn unsorted shipments over to another carrier for delivery, resulting in a three-line haul. Joint rate involving a two-line haul, lower than combination applicable for three-line haul, contemporaneously in effect. *Held*: Rate legally applicable not found unreasonable as compared with rates for comparable distances for three-line hauls or with joint rate in effect and subsequently established via route of movement. *Southern Fuel Co. v. Director General, as Agent*, 457.

THROUGH AND LOCAL. *See also SECTION 4.*

Joint rate legally applicable on petroleum gas oil from Lawrenceville, Ill., to Clayton, Miss., exceeded the combination of rates to and from Memphis, Tenn., plus a single flat increase of 4.5 cents authorized by the Director General, which lower rate was subsequently established. *Reparation awarded.* *Indian Refining Co. v. Director General, as Agent*, 488.

Joint rate on cement from Universal, Pa., to Benham, Ky., exceeded the aggregate of intermediate rates contemporaneously in effect via route of movement. *Reparation awarded.* *Universal Portland Cement Co. v. B. & O. R. R. Co.*, 489.

THROUGH AND LOCAL.—Continued.

Through rates on horses and mules from Wichita, Kans., to Fort Worth, Tex., and other points, in excess of the aggregate of intermediate rates, found unlawful where unprotected by appropriate applications. *Wichita Board of Commerce v. Director General*, as Agent, 536 (542).

Through rate on sand from Boonville, N. Y., to McKeever, N. Y., during federal control, exceeded lower combination in effect via route of movement to and from Forestport, N. Y. Reparation awarded. *Meron v. Director General*, as Agent, 725.

Through rates on deciduous and citrus fruits from certain points in California to Salt Lake City and Ogden, Utah, exceeded the aggregates of intermediate rates to and from Oia or Tecoma, Nevada. Measure of reasonable rates prescribed and reparation awarded. *Ryan Fruit Co. v. Director General*, 733.

In the absence of a justifying explanation a through rate in excess of the aggregate of intermediate rates applicable to the same traffic over the same route is *prima facie* unreasonable. *Id.* (735).

THROUGH RATE.

The through rate can not be protected where reconsignment is effected at a point not on a through route to which the rate applies, or where a back haul becomes necessary, except under special tariff provisions. *Northern Brokerage Co. v. Director General*, as Agent, 182.

TICKETS. See also COMMUTATION TICKETS.

Failure of carriers to make a conductor's penalty charge, in addition to the regular fare, against intrastate passengers who board trains without tickets at points where they might have been purchased, while maintaining such a charge against interstate passengers, or maintaining lower penalty charges intrastate than interstate, found unduly prejudicial to interstate passengers, unduly preferential of intrastate passengers, and unjustly discriminatory against interstate commerce. Penalty charge of not in excess of 15 cents prescribed. *South Carolina Fares and Charges*, 290 (303); *North Carolina Fares and Charges*, 362.

TOLLS. See BRIDGE TOLLS.**TON-MILE REVENUE. See EARNINGS.****TONNAGE. See VOLUME OF TRAFFIC.****TRACKAGE CHARGES.**

Schedules filed by the Chicago & West Ridge R. R., naming trackage charges, ordered stricken from the Commission's files, as that carrier found not to be a common carrier subject to the act. *Trackage Charge on Loaded Cars*, 184.

TRACKAGE RIGHTS.

Respondent, having acquired certain trackage rights, proposes to perform the entire transportation service without increase in charge to shippers. Proposed change in routing of coal from Kentucky and Tennessee mines on the L. & N. R. R. to Atlanta, Ga., beyond Cartersville, Ga., found justified. Coal to Atlanta, Ga., via Cartersville and W. & A. Ry., 509.

TRANSCONTINENTAL RATES.

Domestic rate of \$2.475 on frozen meat from South San Francisco, Calif., to New York, N. Y., for export, exceeded lower export rate of \$1.50 contemporaneously in effect, but found unreasonable only in so far as it exceeded \$2 per 100 pounds. Reparation awarded. *Swift & Co. v. Director General*, 1.

